Argued 1-11th Judge Davis
Nov. 11th —
— Affirmed —

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~252~~. 41

JABEZ A. SAWYER AND LYMAN B. FRAZIER, APPELLANTS,

vs.

EDWARD TURPIN, AUGUSTUS HENRY NOVELLI, FRANCIS KOENIG, AND HARDY BOWKER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED OCTOBER 14, 1873.

Turpin & al vs Sawyer & al
Stroy Dunbar

SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA,
Massachusetts District, ss:

At a circuit court of the United States for the first circuit, begun and holden at Boston, within and for the district of Massachusetts, on Tuesday, the fifteenth day of October, in the year of our Lord one thousand eight hundred and seventy-two.

Before the honorable George F. Shepley, circuit judge.

JABEZ A. SAWYER ET AL., COMPLAINANTS, APpellants,
v.
EDWARD TURPIN ET AL., DEFENDANTS,
2 appellees. } In equity.

3 The transcript of the record in this cause of the district court of the United States for this district was duly filed and entered here at the October term of this court, A. D. 1871, and is in the words and figures following, namely:

The United States of America to Edward Turpin, of Brooklyn, in the State of New York; Augustus Henry Novelli, of London; Francis Koenig, of Bowdon, near Manchester, and all said three last-named being of England, in the kingdom of Great Britain:

You are hereby cited and administered to be and appear at a circuit court of the United States for the district of Massachusetts, to be holden at Boston, in said district, on the 16th day of October next, (the 15th of said month being Sunday,) pursuant to an appeal in a suit of equity, filed in the clerk's office of the district court for the said district on the 26th day of August, 1871; wherein Jabez A. Sawyer, of Cambridge, and Lyman B. Frazier, of Lynn, both in the said district, are the appellants, and you are the appellees, to show cause, if any there be, why the judgment or decree rendered against the said appellants, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable John Lowell, judge of the district court of the United States for the district of Massachusetts, this thirty-first day of August, in the year of our Lord one thousand eight hundred and seventy-one.

JOHN LOWELL,
Judge of the District Court for District of Mass.

4 U. S. OF AMERICA, *Mass. District, ss:*

BOSTON, *August 31st*, 1871.

I hereby certify that I have notified the within-named Edward Turpin, Augustus Henry Novelli, and Francis Koenig to appear as within directed, by giving in hand to Brooks and Hall, attorneys for said Turpin, Novelli, and Koenig, a true and attested copy of this precept.

ROLAND G. USHER,
U. S. Marshal.

UNITED STATES OF AMERICA,
District of Massachusetts:

At the district court of the United States, begun and holden at Boston, within and for the district of Massachusetts, on the fourth Tuesday

(being the 27th day) of June, in the year of our Lord one thousand eight hundred and seventy-one.

Before the honorable John Lowell, judge.

Bill of complaint.

JABEZ A. SAWYER ET AL., ASSIGNEES, COMplainants,
versus
EDWARD TURPIN ET AL., DEFENDANTS. } In equity.

This bill was filed in court on the first day of January A. D. 1870, and is as follows, viz:

To the honorable John Lowell, judge of the district court of the United States, within and for the district of Massachusetts:

5 Respectfully represent Jabez A. Sawyer, of Cambridge, in said district, and Lyman B. Frazier, of Lynn, in said district, that they are assignees in bankruptcy of Jeremiah C. Bacheller, of said Lynn, a bankrupt, who filed his petition in this court on the 22d day of October last, and afterward was duly adjudicated as such bankrupt by the proper register of this court, and that heretofore, to wit, on the 31st day of July last and within four months from the filing of said petition, the said Bacheller was seized and possessed of the two following-described parcels of real estate, namely, a certain lot of land, with the buildings thereon, situated in said Lynn, and bounded southwesterly by Atlantic street, five rods; northwesterly by land of W'm A. Melcher, seven rods; northeasterly by other land, formerly of said Bacheller, five rods; and southeasterly by land of John Newhall, nine rods. Also a certain other lot of land, with the buildings thereon, situated in said Lynn, and bounded easterly on Bacheller street, southeasterly and southerly on land of the late Sarah Tuck, and land of Seth Dodge, southwesterly and northwesterly by land of the late Asa T. Newhall and land of Geo. W. Vincent; that said Bacheller was also the owner of a certain three-story, flat-roof, framed building, situated upon the northerly side of Exchange street, in said Lynn, and then occupied by said Bacheller as a shoe-finding store, and B. Dufar & Co., as a shoe manufactory; that on said 31st day of July, the said Bacheller was indebted to the firm of Novelli & Company, a copartnership doing business in the city of Leicester, in the kingdom of Great Britain, in a large sum of money, to wit, forty thousand dollars in gold.

And your orators further show unto your honor that the said Bacheller, being so seized and possessed of said two parcels of real estate, and said building, did, on said 31st day of July, mortgage the said parcels of real estate, by two mortgages, one of the said first described parcel being to secure the sum of five thousand dollars, and the other of the aforesaid second described parcel being to secure the sum of two thousand dollars unto one Edward Turpin, who was then and still continues the authorized agent of the said Novelli & Company; that the said Bacheller did likewise, on said day, give unto said Tur-
6 pin a chattel mortgage of the said described building, to secure the sum of eight thousand dollars. A copy of the said mortgage upon the estate first herein described is hereto annexed marked A, and a copy of the mortgage upon the second estate herein described is hereto annexed, marked B, and a copy of said chattel mortgage upon said building is hereto annexed, marked C, which copies your orators

pray may be made part of this their petition. And the said Turpin caused the said two mortgages of real estate to be recorded on the fifteenth day of September last, and the said chattel mortgage to be recorded on the seventeenth day of the same month.

And your orators aver and charge that all the said three mortgages were fraudulent, and made by the said bankrupt to the said Turpin, with a view to give a fraudulent preference to the said Novelli & Company, as the said bankrupt's creditors, and that the said Novelli & Company are the parties to be benefited by said mortgages, and that the said Turpin, Novelli & Company, at the time of the execution of the said mortgages to the said Turpin, believed, and had reasonable cause to believe, that the said Bacheller was insolvent and in contemplation of insolvency, and that the said mortgages were made in fraud of the United States bankrupt act, and with a view to prevent said mortgaged property from coming to said bankrupt's assignees in bankruptcy, and to prevent the same from being distributed under said act, and to defeat the object of, impede and evade the provisions thereof. And your orators allege and represent to your honor that said three mortgages are wholly void, and said mortgaged property is recoverable by your orators, as assets of the said bankrupt, in this court sitting in equity.

And, to this end, may it please your honor to order and decree that the aforesaid mortgages be set aside and cancelled, and that your orators may recover said mortgaged property and be directed and authorized by this court to sell and dispose of the same, as assets of the said bankrupt, free and discharged from said mortgages.

And may it also please your honor that a writ of injunction or an order may issue from this honorable court, directed to the said Turpin and Novelli & Company, their agents, attorneys, and servants, enjoin-
7 ing and restraining them, and any one acting for him, or them, or either of them, from foreclosing said mortgages, or assigning, conveying, or otherwise transferring or changing the title to the same, during the pending of this suit, or until the further order of this court.

And may it further please this honorable court to issue your writ of the subpœna, directed to the said Edward Turpin and Novelli and Company, commanding them on a certain day and under a certain pain therein to be limited, to be and appear before your honor in this honorable court, and then and there to stand to, perform, and abide such order, direction, and decree as to this honorable court shall seem meet, and to right and justice doth appertain.

JABEZ A. SAWYER,
For Self and Lyman B. Frazier.

JAN. 1, 1870.—Subscribed and sworn to before me,
EDWARD DEXTER, *Clerk.*

A.

Know all men by these presents that I, Jeremiah C. Bacheller, of Lynn, in the county of Essex, and Lucy J., my wife, who joins in token of her release of all right of dower and homestead in the premises, in consideration of five thousand dollars paid by E. Turpin, of New York, in the State of New York, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Turpin a lot of land, and the buildings thereon standing, situated in said Lynn, and bounded as follows: southwesterly by Atlantic street, five rods; northwesterly by land of W'm N. Melcher, seven rods; northeasterly by my

cther land, five rods, and southeasterly by land of John Newhall, nine rods. To have and to hold the above-granted premises, with all the privileges and appurtenances thereto belonging, to the said Turpin, his heirs and assigns, to their use and behoof forever. And I, the said J. C. Bacheller, for myself and my heirs, executors, and administra-
8 tors, do covenant with said Turpin, his heirs and assigns, that I am lawfully held fee-simple of the aforegranted premises; that they are free from all incumbrances, except a mortgage of fifty-five hundred dollars; that I have good right to sell and convey the same to the said Turpin, his heirs and assigns forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Turpin, his heirs and assigns forever, against the lawful claims and demands of all persons: Provided, nevertheless, that if the said Bacheller, his heirs, executors, or administrators, shall pay unto the said Turpin, his executors, administrators, and assigns, the sum of five thousand dollars in one year from date of this deed, then this deed, as also a promissory note having even date with these presents, signed by the said Bacheller, whereby he promises to pay the said Turpin the said sum and interest at the time aforesaid, shall be absolutely void to all intents and purposes.

In witness whereof we, the said Jeremiah C. Bacheller and Lucy J. Bacheller, have hereunto set our hands and seals, this twenty-seventh day of July, in the year of our Lord eighteen hundred and sixty-nine.

JEREMIAH C. BACHELLER. [SEAL.]
LUCY C. BACHELLER. [SEAL.]

Signed, sealed, and delivered in the presence of
JEREMIAH PATCH.

ESSEX, ss., July 31st, 1869.—Then personally appeared the above-named Jeremiah C. Bacheller, and acknowledged the above instrument to be his free act and deed.

Before me,

IRA J. PATCH,
Justice of the Peace.

ESSEX, ss. Rec'd Sept. 15, 1869, 17 m. before 2 p. m. Rec. and Ex. by

EPH'M BROWN, *Reg'r.*

9 B.

Know all men by these presents that I, Jeremiah C. Bacheller, of Lynn, in the county of Essex, and Lucy J. Bacheller, my wife, in token of her release of all right of dower or homestead in the premises described, in consideration of two thousand dollars paid by Edward Turpin, of the city, county, and State of New York, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Turpin a certain lot of land with the buildings thereon, situated in said Lynn, and bounded as follows: easterly on Bacheller street, southeasterly and southerly on land of the late Sarah Tuck and land of Seth Dodge, southwesterly and northwesterly by land of the late Ara S. Newhall and land of Geo. W. Vincent, or however otherwise the same may be bounded: To have and to hold the above-granted premises, with all the privileges and appurtenances thereto belonging, to the said Turpin, his heirs and assigns, to their use and behoof forever.

And I, the said Bacheller, for me and my heirs, executors and administrators, do covenant with the said Turpin, his heirs and assigns, that I am lawfully seized in fee-simple of the aforegranted premises that they are free from all incumbrances; that I have good right to sell and convey the same to the said Turpin, his heirs and assigns forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the , said his heirs and assigns forever, against the lawful claims and demands of all persons: Provided, nevertheless, that if the said Bacheller, his heirs, executors, or administrators, shall pay unto the said Turpin, his executors, administrators, or assigns, the sum of two thousand dollars in one year from this date with interest, then this deed, as also a promissory note bearing even date with these presents, signed by the said Bacheller, whereby he agrees to pay the said Turpin the said sum and interest, at the time aforesaid, shall be absolutely void, to all intents and purposes; and provided also, that until default of the payment of the said sum or interest or other default, as herein provided, the mortgagee shall have no right to enter and take possession of the premises.

10 In witness whereof the said Jeremiah C. and Lucy J. have hereunto set our hands and seals, this thirty-first day of July, in the year of our Lord eighteen hundred and sixty-nine.

JEREMIAH C. BACHELLER. [SEAL.]
LUCY J. BACHELLER. [SEAL.]

Signed, sealed, and delivered in the presence of—
IRA J. PATCH.

ESSEX, ss., July 31, 1869.—Then personally appeared the above-named Jeremiah C. Bacheller, and acknowledged the above as true, and to be his free act and deed.

Before me,

IRA J. PATCH,
Justice of the Peace.

ESSEX, ss. Received Sept. 15, 1869, 17 minutes before 2 p. m. Rec. and ex. by—

EPH'M BROWN, *Reg'r.*

C.

Know all men by these presents that I, Jeremiah C. Bacheller, of Lynn, in the county of Essex, in consideration of the sum of eight thousand dollars, to me paid by Edward Turpin of the city and State of New York, the receipt whereof is hereby acknowledged, have granted, bargained, and by these presents do grant, bargain, and sell unto the said Turpin a certain three-story, flat-roof, framed building, situated upon the northerly side of Exchange street, in said Lynn, and occupied by myself as a shoe-finding store, and B. Dufar & Co. as a shoe manufactory.

To have and to hold the afore-described building to the said Turpin, his executors, administrators, and assigns forever. And I, the said Bacheller, do avouch myself to be the lawful owner of said building, and have

11 good right to sell and dispose of the same in manner aforesaid. Provided, nevertheless, that if the said Bacheller, his executors or administrators, shall pay unto the said Turpin, his executors, administrators, or assigns, the said sum of eight thousand dollars in one year from this date, with interest, then this mortgage shall be void.

In witness whereof I, the said Jeremiah C. Bacheller, have subscribed

the same this thirty-first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

JEREMIAH C. BACHELLER. [SEAL.]

[$8.00 stamp.]

Executed and delivered in the presence of—
IRA J. PATCH.

Received September 17, 1869, at 2 o'clock 15 minutes p. m. Examined by—

BENJ. H. JONES, *City Clerk.*

Summons to show cause.

Then on the first day of January, A. D. 1870, by order of the judge, a summons issued, commanding the marshal to summon said Edward Turpin, agent for Novilli & Company, and said Novelli & Company, (if they might be found in his precinct,) to appear before the district court of the United States, to be holden at Boston, within and for the Massachusetts district, on Monday, the 15th day of January, 1870, at ten o'clock a. m., then and there to show cause why an injunction should not issue against them, enjoining and restraining them, or either of them, or any one acting for them, or either of them, from foreclosing the mortgages of certain real and personal estate in said Lynn, given by one Jeremiah C. Bacheller, of said Lynn, or otherwise transferring or changing the title to the same as prayed for in the foregoing bill, and to make due return of his doings.

12 The following is the marshal's return, viz:

U. S. OF AMERICA, *Mass. District, ss:*

BOSTON, *January* 13, 1870.

Pursuant hereunto I this day summoned the within Edward Turpin to appear as within directed, by giving to him in hand a true and attested copy of this precept.

GEORGE L. ANDREWS,
U. S. Marshal.

Subpœna.

On said first day of January, A. D. 1870, a subpœna issued, commanding and strictly enjoining the said Edward Turpin, agent of Novelli & Company, and said Novelli & Company, laying all other matters aside, and notwithstanding any excuse, that they personally be and appear before said district court, to be holden at the office of the clerk of said court, in Boston, in said district, on the first Monday, being the seventh day of February next, to answer concerning those things which should be objected against them, then and there, by Jabez A. Sawyer and Lyman B. Frazier, assignees in bankruptcy of Jeremiah C. Bacheller, of Lynn, and particularly to a bill of complaint this day filed in said court by said assignees, and to do further, and receive that which said court shall consider in this behalf.

The marshal made the following return, viz:

UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *January* 13, 1870.

I hereby certify that I have notified the within-named Edward Turpin to appear as within directed, by giving to him in hand a true and attested copy of this precept.

GEO. L. ANDREWS,
U. S. Marshal.

13 *Order for sale of property.*

DISTRICT COURT U. S., *Mass. District, ss :*

In the matter of Jeremiah C. Bacheller of Lynn, in said district, a bankrupt.

JABEZ A. SAWYER AND ALS., ASSIGNEES, pet'rs, *vs.* EDWARD TURPIN AND NOVELLI & COMPANY. } In bankruptcy.

And now on this sixteenth day of February, A. D. eighteen hundred and seventy, upon the petition of the assignees of said bankrupt, against Edward Turpin and Novelli & Company, it is ordered, with the assent of said Turpin, that the real estate respectively described in the two mortgages made by said Bacheller to said Turpin, one dated on the twenty-seventh day of July, A. D. eighteen hundred and sixty-nine, and recorded with Essex deeds, Massachusetts, book 780, leaf 284, one dated on the thirty-first day of said July, and recorded as aforesaid, book 780, leaf 283, and the building described in a mortgage from said Bacheller to said Turpin, dated on said thirty-first day of July, and recorded by the city clerk of the city of Lynn, in book 9 of mortgages, pages 266 and 267, be sold at public auction by said assignees, in the manner provided by the bankrupt law of the United States, free and discharged of and from said mortgages, and that the lien or claim of said Turpin or Novelli & Co., under or by virtue of said mortgages, be transferred from the property so mortgaged to the proceeds thereof. It is further ordered that said assignee deposit the proceeds of sale, after deducting the expenses of the same under the direction of the register in this case, to abide the decision of this cause, unless the said Turpin, or said Novelli & Co., shall then or afterwards give a bond to said assignees with a surety or sureties, to be approved by said register, conditioned to pay over to them, if so ordered by the court, the moneys which said Turpin, or said Novelli & Co., shall receive under this order, with interest at the rate of six per cent. per annum, from the time when received by said Turpin or Novelli & Co., and in the event of said Turpin, or said
14 Novelli & Co., giving said bond, and whenever they or any of them shall give said bond, the proceeds of the property so mortgaged to said Turpin, after deducting so much of the expenses of sale as shall be chargeable to said proceeds, shall be delivered to said Turpin, or said Novelli & Co. And it is further ordered that said assignees give to said Turpin at least seven days' notice of the time and place of sale, and that said Turpin, or said Novelli & Co., or either member of that firm, may purchase at such sale said property, or any of it, if he, or they, or any of them, shall be the highest bidder or bidders.

At chambers, in Boston, Feb. 16, 1870.

JOHN LOWELL,
District Judge.

This bill was entered at the December term of this court, A. D. 1869, and thence was continued to the March term thereof, A. D. 1870, when, on the twenty-first day of March, A. D. 1870, the following answer of Edward Turpin was filed in court, viz:

Answer of Edward Turpin.

District court U. S., Massachusetts district, ss:

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN.

And now Edward Turpin, defendant in the above cause, saving and reserving to himself all benefit and advantage of exception which can or may be had or taken to the petition in said cause, for answer thereunto, or unto so much, or such parts thereof, as he is advised is or are material for him to answer unto, answering says, that he admits that he is, and from the second day of April, A. D. 1868, to the present time, has been, the agent of Novelli & Co., a copartnership doing business in the year eighteen hundred and sixty-nine in London, Manchester, Bradford, Leeds, Huddersfield, Belfast, and Glasgow, in Great Britain; and that Jeremiah C. Bacheller, mentioned in said petition, executed
15 to this defendant the mortgages, copies of which are hereto annexed, all of which this respondent caused to be duly recorded, to wit, the mortgages of the real estate, in the registry of deeds for the county of Essex, on the fifteenth day of September last, and the mortgage of personal property, by the city clerk of the city of Lynn, on the seventeenth day of the same month.

That said Bacheller so executed and delivered the said mortgages to this respondent, as agent for said Novelli & Co., and as collateral security for his, said Bacheller's, indebtedness to said Novelli & Co.; that said mortgage, dated on the twenty-seventh day of July, A. D. 1869, was delivered by said Bacheller to this defendant on that day, or the next day, and the mortgages dated on the thirty-first day of said July were delivered by him, said Bacheller, to this defendant on the day of their date.

And this respondent, further answering, denies that said mortgages, or either of them, were or was fraudulent or made by said Bacheller to said Turpin, with a view to give a fraudulent preference to said Novelli & Co., and denies that said Turpin, or said Novelli & Co., at the time of the execution of said mortgages to said Turpin, believed, or had reasonable cause to believe, that said Bacheller was insolvent, or in contemplation of insolvency, or that said mortgages were made in fraud of the United States bankrupt act, or with a view to prevent said mortgaged property from coming to said Bacheller's assignees in bankruptcy, or to prevent the same from being distributed under said act, or to defeat the object of, or impede or evade the provisions thereof. And this respondent denies that said mortgages, or any of them, are or is void, and denies that said mortgaged property is recoverable by said petitioners as assets of said Bacheller.

And this respondent, further answering, admits that on the twenty-seventh and thirty-first days of July last, said Bacheller was indebted to said firm of Novelli & Company in the sum of twenty-seven thousand eight hundred and thirty-nine dollars, gold, and that said mortgages were given to the amount therein mentioned as security for said indebtedness.

And this defendant, further answering, says that on the fifteenth day of May, eighteen hundred and sixty-nine, said Bacheller executed and delivered to this defendant, as security for his, said Bach-
16 eller's, indebtedness to said Novelli & Co., conveyances of the

same property, which is described in said conveyances dated on said thirty-first day of July, and for the same amount as is therein respectively set forth; and that this defendant, upon receiving said conveyances, dated on said thirty-first day of July, surrendered to said Bacheller the said conveyances so given to this defendant in May.

And this respondent, further answering, says that he has no knowledge whether the petitioners are assignees in bankruptcy of said Bacheller, and is ignorant as to the time when he filed his petition in bankruptcy, or was adjudicated a bankrupt.

And this respondent, further answering, says that he does not know what, or how good a title said Bacheller had to said property, at the time when he mortgaged the same to this respondent.

Without this, that there is any other matter, cause, or thing in the said petitioner's said petition contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of this defendant; all which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

EDWARD TURPIN.

BROOKS & BALL,
Of Counsel with said Turpin.

UNITED STATES OF AMERICA,
Southern District of New York:

On this 1st day of March, 1870, personally appeared before me, Edward Turpin, who being by me duly sworn, did depose and say that he is the defendant named in the foregoing answer; that he has heard the said answer read, and knows the contents thereof; and that
17 the same is true to his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

KENNETH G. WHITE,
United States Commissioner for Southern District of New York.

Mortgage deed.

Know all men by these presents that I, Jeremiah C. Bacheller, of Lynn, in the county of Essex, and Lucy J., my wife, who joins in token of her release of all right of dower or homestead in the premises:

In consideration of five thousand dollars, paid by E. Turpin, of New York, in the State of New York, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey unto the said Turpin a lot of land, and the buildings thereon standing, situated in said Lynn, and bounded as follows: southwesterly by Atlantic street, five rods; northwesterly by land of W'm N. Melcher, seven rods; northeasterly by my other land, five rods, and southeasterly by land of John Newhall, nine rods.

To have and to hold the above-granted premises, with all the privileges and appurtenances thereto belonging, to the said Turpin, his heirs and assigns, to their use and behoof forever.

And I, the said J. C. Bacheller, for myself and my heirs, executors and administrators, do covenant with the said Turpin, his heirs and assigns, that I am lawfully seized in fee-simple of the afore-granted

premises; that they are free from all incumbrances, except a mortgage of fifty-five hundred dollars; that I have good right to sell and convey the same to the said Turpin, his heirs and assigns forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said Turpin, his heirs and assigns forever, against the lawful claims and demands of all persons.

18 Provided, nevertheless, that if the said Bacheller, his heirs, executors or administrators, shall pay unto the said Turpin, his executors, administrators, or assigns, the sum of five thousand dollars, in one year from date of this deed, then this deed, as also a promissory note, bearing even date with these presents, signed by the said Bacheller, whereby he promises to pay the said Turpin the said sum and interest at the time aforesaid, shall be absolutely void to all intents and purposes.

In witness whereof we, the said Jeremiah C. Bacheller and Lucy J. Bacheller, have hereunto set our hands and seals, this twenty-seventh day of July, in the year of our Lord eighteen hundred and sixty-nine.

JEREMIAH C. BACHELLER. [L. S.]
LUCY J. BACHELLER. [L. S.]

Signed, sealed, and delivered in presence of—
IRA J. PATCH.

ESSEX, ss: 27th July, 1869. Then personally appeared the above-named J. C. Bacheller, and acknowledged the above instrument to be his free act and deed, before me.

IRA J. PATCH,
Justice of the Peace.

ESSEX, ss: Rec'd Sept. 15, 1869, 17 m. before 2 p. m. Recorded book 780, leaf 284, and ex. by

EPHR'M BROWN, *Reg'r.*

[U. S. int. rev. stamp, $5.00, cancelled.]

Mortgage deed.

Know all men by these presents that I, Jeremiah C. Bacheller, of Lynn, in the county of Essex, and Lucy J. Bacheller, my wife, in token of her release of all right of dower or homestead in the premises, in consideration of two thousand dollars, paid by Edward Turpin, of the city, county, and State of New York, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell, and convey

19 unto the said Turpin a certain lot of land, with the buildings thereon, situated in said Lynn, and bounded as follows: Easterly on Bacheller street; southeasterly and southerly on land of the late Sarah Tuck and land of Seth Dodge; southwesterly and northwesterly by land of the late Asa T. Newhall and land of Geo. W. Vincent, or however otherwise the same may be bounded.

To have and to hold the above-granted premises, with all the privileges and appurtenances thereto belonging, to the said Turpin, his heirs and assigns, to their use and behoof forever.

And I, the said Bacheller, for me and my heirs, executors, and administrators, do covenant with the said Turpin, his heirs and assigns, that I am lawfully seized in fee-simple of the afore-granted premises; that they are free from all incumbrances; that I have good right to sell

and convey the same to the said Turpin, his heirs and assigns forever, as aforesaid; and that I will, and my heirs, executors, and administrators shall warrant and defend the same to the said , his heirs and assigns forever, against the lawful claims and demands of all persons: Provided, nevertheless, that if the said Bacheller, his heirs, executors, or administrators, shall pay unto the said Turpin, his executors, administrators, or assigns, the sum of two thousand dollars in one year from this date, with interest, then this deed, as also a promissory note, bearing even date with these presents, signed by the said Bacheller, whereby he agrees to pay the said Turpin the said sum and interest at the time aforesaid, shall be absolutely void, to all intents and purposes; and provided, also, that until default of the payment of the said sum or interest, or other default, as herein provided, the mortgagee shall have no right to enter and take possession of the premises.

In witness whereof, we, the said Jeremiah C. and Lucy J., have hereunto set our hands and seals, this thirty-first day of July, in the year of our Lord eighteen hundred and sixty-nine.

JEREMIAH C. BACHELLER. [L. S.]
LUCY J. BACHELLER. [L. S.]

Signed, sealed and, delivered in presence of—
IRA J. PATCH.

20 ESSEX, ss: July 31, 1869.—Then personally appeared the above-named Jeremiah C. Bacheller, and acknowledged the above instrument to be his free act and deed, before me,

IRA J. PATCH,
Justice of the Peace.

[$2.00 U. S. int. rev. stamp. Cancelled]

ESSEX, ss.: Rec'd Sept. 15, 1869, 17 m. before 2 p. m. Recorded book 780, leaf 283, and ex. by—

EPHR'M BROWN, *Reg'r.*

Mort'age of personal property.

Know all men by these presents, that I, Jeremiah C. Bacheller, of Lynn, in the county of Essex, in consideration of the sum of eight thousand dollars, to me paid by Edward Turpin, of the city and State of New York, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said Turpin a certain three-story, flat-roof, framed building, situated upon the northerly side of Exchange street, in said Lynn, and occupied by myself as a shoe-finding store, and B. Dufar & Co. as a shoe manufactory.

To have and to hold the afore described building to the said Turpin, his executors, administrators, and assigns forever.

And I, the said Bacheller, do avouch myself to be the lawful owner of said building, and have good right to sell and dispose of the same in manner aforesaid: Provided, nevertheless, that if the said Bacheller, his executors or administrators, shall pay unto the said Turpin, his executors, administrators, or assigns, the said sum of eight thousand dollars, in one year from this date, with interest, then this mortgage shall be void.

In witness whereof I, the said Jeremiah C. Bacheller, have subscribed

the same, this thirty-first day of July, in the year of our Lord one thousand eight hundred and sixty-nine.

JEREMIAH C. BACHELLER. [L. S.]

Executed and delivered in presence of—
IRA J. PATCH.

21 CITY OF LYNN.—Received Sept. 17, 1869, at 2 o'clock 15 minutes p. m. Recorded book 9, pages 266 and 267. Examined by—
BENJ. H. JONES,
City Clerk.

[$5.00 int. rev. stamp. Cancelled.]
[$3.00 int. rev. stamp. Cancelled.]

From said March term, A. D. 1870, this cause was continued from term to term, to the December term of this court, A. D. 1870, when on the 25th day of December, A. D. 1870, the following answer of Novelli & Co. to bill of complaint was filed in court, viz:

Answer of Novelli & Company.

District court U. S. Massachusetts district, ss.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

And now come Augustus Henry Novelli, of London, in England, and Francis Koenig, of Bowdon, near Manchester, and Charles Hardy Bowker, of Pendleton, near said Manchester, all in England, copartners under the firm of Novelli & Company, and saving and reserving to themselves all benefit and advantage of exception, which can or may be had or taken to the petition or bill in equity in this cause, for answer thereunto, or unto so much and such parts thereof as they are advised is or are material for them to answer unto, answering say, that they admit that Edward Turpin, mentioned in said petition, is, and from the second day of April, A. D. eighteen hundred and sixty-eight, to the present time, has been the agent of said Novelli & Co., a copartnership doing business throughout the year eighteen hundred and sixty-nine, and before, in London, Manchester, Bradford, Leeds, Huddersfield, Belfast, and Glasgow, in Great Britain, and that they believe Jeremiah C. Bacheller, mentioned in said petition, executed to said Turpin the mortgages, copies of which are annexed to said Turpin's answer in this case, all of which said Turpin, as these respondents are informed and believe, caused to be duly recorded, to wit, the mortgages on the real estate
22 in the registry of deeds for the county of Essex, on the fifteenth day of September, A. D. 1869, and the mortgage of personal property by the city clerk of the city of Lynn, on the seventeenth day of the same month; that said Bacheller so executed and delivered the said mortgages to said Turpin, as agent for said Novelli & Co., and as collateral security for his, said Bacheller's, indebtedness to said Novelli & Co.; that these respondents believe that said mortgage, dated on the twenty-seventh day of July, A. D. eighteen hundred and sixty-nine, was delivered by said Bacheller to said Turpin on that day, or the next day, and the mortgages dated on the thirty-first day of July, these re-

spondents believe, were delivered by him, said Bacheller, to said Turpin on the day of their date.

And these respondents, further answering, deny that said mortgages, or either of them, were or was fraudulent, or made by said Bacheller to said Turpin with a view to give a fraudulent preference to said Novelli & Co, and deny that said Turpin, or said Novelli & Co., at the time of the execution of said mortgages to said Turpin, believed, or had reasonable cause to believe, that said Bacheller was insolvent, or in contemplation of insolvency, or that said mortgages were made in fraud of the United States bankrupt act, or with a view to prevent said mortgaged property from coming to said Bacheller's assignees in bankruptcy, or to prevent the same from being distributed under said act, or to defeat the object of, or impede or evade the provisions thereof; and these respondents deny that said mortgages, or any of them, are or is void, and deny that said mortgaged property is recoverable by said petitioners as assets of said Bacheller. But these respondents are informed and believe that the mortgage on the Bacheller street property, a copy of which is, they believe, so annexed to said Turpin's answer, passed no title thereto to said Turpin, as said Bacheller had no title thereto himself.

And these respondents, further answering, admit that on the twenty-seventh and thirty-first days of July, A. D. eighteen hundred and sixty-nine, said Bacheller was indebted to said firm of Novelli & Company in the sum of twenty-seven thousand eight hundred and thirty-nine dollars, gold, and that said mortgages were given to the amount therein mentioned as security for said indebtedness.

23 And these respondents, further answering, say that they are informed and believe that on the fifteenth day of May, A. D. 1869, said Bacheller executed to said Turpin as security for his, said Bacheller's, said indebtedness to said Novelli & Co., conveyances of the same property which is described in said mortgages, dated on said thirty-first day of July, and for the same amount as is therein respectively set forth; and that said conveyances, so made on said fifteenth day of May, A. D. 1869, were sent by mail to said Turpin, but miscarried for a time in the mail, and were received by said Turpin on or before the twentieth day of June, A. D. 1869; and that said Turpin in the mean time, to wit, before the ninth day of June, A. D. eighteen hundred and sixty-nine, and during their miscarriage, received from said Bacheller original conveyances of the like tenor and date as those which had miscarried and upon the same property; and that said Turpin returned or delivered to said Bacheller one set of said conveyances so dated in May, and that said Turpin, upon receiving said conveyances, dated on said thirty-first day of July, A. D. eighteen hundred and sixty-nine, surrendered to said Bacheller the other set of said conveyances so dated in May.

And these respondents, further answering, say that they have no knowledge, but are informed and believe, that the petitioners are assignees in bankruptcy of said Bacheller's estate, and they are informed and believe that said Bacheller filed his petition in bankruptcy on the twenty-second day October, A. D. eighteen hundred and sixty-nine, and was thereafterwards adjudicated a bankrupt.

And these respondents, further answering, say that they do not know what or how good a title said Bacheller had to said property, other than the said Bacheller-street property, at the time when he mortgaged the same to said Turpin.

Without this, that there is any other matter, cause, or thing in the said petitioners' said petition contained material and necessary for

these respondents to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these respondents; all which matters and things these respondents are ready and willing to aver,
24 maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and harges in this behalf most wrongfully sustained.

A. H. NOVELLI.
F. KOENIG.
C. H. BOWKER.

BROOKS & BALL,
Of Counsel with said Novelli, Koenig and Bowker.

Subscribed and sworn to by Augustus Henry Novelli, at No. 5 Nicholas lane, Lombard street, in the city of London, in England, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred seventy, before me.

[SEAL.] W'M DUFF, *Not. Pub.*

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA AT LONDON.

I, Joshua Nunn, vice-consul-general of the United States of America for London, and the dependencies thereof, do hereby make known and certify to all whom it may concern, that William Duff, before whom the annexed affidavit of Augustus Henry Novilli was made, as appears by his signature thereto, is a notary public, duly admitted and sworn, practicing in the city of London aforesaid, and authorized to receive affidavits, and that to all acts by him so done, full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof I have hereunto set my hand and affixed the seal of the consulate-general of the United States, at London, aforesaid, this twenty-fourth day of November, in the year of our Lord one thousand eight hundred and seventy, and in the ninety-fifth year of the Independence of the said United States.

[SEAL.] J. NUNN.

25 Subscribed and sworn to by Francis Koenig, known to me, at the city of Manchester, in the county of Lancaster, in England, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and seventy, before me.

ALFRED LEAF, [SEAL.]
Notary Public, and a Commissioner to administer oaths in Chancery in England.

Subscribed and sworn to by Charles Hardy Bowker, known to me, at the city of Manchester, in the county of Lancaster, in England, this twenty-fifth day of November, in the year of our Lord one thousand eight hundred and seventy, before me.

ALFRED LEAF, [SEAL.]
Notary Public, and a Commissioner to administer oaths in Chancery in England.

UNITED STATES CONSULATE, MANCHESTER, ENGLAND.

I, C. H. Branscomb, consul of the United States of America at Manchester aforesaid, do certify and make known to whom it may con-

cern, that Alfred Leaf, of the city of Manchester, before whom the annexed affidavits have been made, and whose true seal and signature is subscribed thereto, was, at the time of taking and signing the same, a notary public, duly authorized and admitted, and that to all acts by him so done, full faith is due and ought to be given in judicature and throughout.

In testimony whereof I have hereunto signed my name and affixed the seal of this consulate, this twenty-sixth day of November, 1870, and in the 96th year of the Independence of the United States.

C. H. BRANSCOMB,
United States Consul.

26 From said December term, A. D. 1870, this cause was continued to this present term, and on the 22d day of August, A. D. 1871, the following decree was entered, viz:

This case came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it is now, on this 22d day of August, 1871, ordered, adjudged, and decreed as follows, viz:

That the complainants shall retain as assets of the bankrupt Bachelleri all money received by them from the sale under an order of this court, dated Feb. 15th, 1870, of the real estate on Atlantic street, in the city of Lynn, described in the bill, but that they shall pay over to the respondents, Novelli & Company, the proceeds of the sale under said order, of the building described in the bill as being situated on the northerly side of Exchange street, in said Lynn.

On the twenty-sixth day of August, A. D. 1871, the following claim of appeal was filed in the clerk's office, viz:

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

In the district court.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET AL. } In equity.

Notice is hereby given to the clerk of said court that the complainants claim an appeal from the decree of the judge of said court, rendered in said case on the twenty-second day of August, 1871, to
27 the circuit court of the United States, next to be holden at Boston, in said district, on the fifteenth day of October, 1871.

J. G. ABBOTT,
For Complainants.

On said twenty-sixth day of August, A. D. 1871, the following bond for costs, etc., was filed in the clerk's office viz:

Know all men by these presents, that we, Jabez A. Sawyer, of Cambridge, and Lyman B. Frazier, of Lynn, as principals, and Josiah G. Abbott and Benjamin Dean, both of the city of Boston, as sureties, and all in the Commonwealth of Massachusetts, are held, and firmly bound unto Edward Turpin, of Brooklyn, in the State of New York, Augustus Henry Novelli, of London, Francis Koenig, of Bowdon, near Manchester, and Charles Hardy Bowker, of Pendleton, near Manchester, and all of England, in the kingdom of Great Britain, in the full and

just sum of five hundred dollars, to be paid to the said Turpin, Novelli, Koenig, and Bowker, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas, lately at a term of the district court of the United States for the district of Massachusetts, begun and holden on the fourth Tuesday of June, A. D. 1871, to wit, on the twenty-second day of August, 1871, in a suit in equity depending in said court, between said Sawyer and Frazier, complainants, and the said Turpin, Novelli, Koenig, and Bowker, respondents, by the consideration of said court, decree was rendered against the said complainants, and the said complainants having obtained an appeal to remove the said cause to the circuit court of the United States for said district, to reverse the decree in the aforesaid suit, and a citation directed to the said respondents, citing and admonishing them to be and appear at a circuit court of the United
28 States for said district to be holden at Boston, in said district, on the sixteenth day of October next. Now the condition of the above obligation is such, that if the said Sawyer and Frazier shall prosecute their said appeal to effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JABEZ A. SAWYER. [SEAL.]
L. B. FRAZIER. [SEAL.]
J. G. ABBOTT. [SEAL.]
BENJAMIN DEAN. [SEAL.]

Signed, sealed and delivered in presence of—
N. A. RAMSDELL,
GEORGE A. SAWYER.

Approved:

JOHN LOWELL,
District Judge.

And thereupon said appeal was allowed by the court.

28*a* I, Edward Dexter, clerk of the district court of the United States within and for the district of Massachusetts, hereby certify that the foregoing is a transcript of the record of the said court in the said cause.

In witness whereof I have hereunto subscribed my name and affixed the seal of the said court, this twenty-fourth day of October, A. D. 1871.

[L. S.] EDWARD DEXTER, *Clerk.*

This cause entered as aforesaid at the October term of this court, A. D. 1872; was thence continued from term to term to this present term, when the same is set down for hearing and fully heard, and now, to wit,
March 28th, 1873, it is ordered, adjudged, and decreed by the
28*b* court that the decree of the district court in this cause, entered on the twenty-second day of August, A. D. 1871, be, and the same is hereby affirmed with costs in this circuit court in favor of said appellees and against said appellants, taxed at .

A true record. Attest:

JOHN G. STETSON, *Clerk.*

The opinion of the circuit court in accordance with which the decree of March 28th, 1873, was entered is as follows:

28*c* Circuit court of the United States, district of Massachusets.

JABEZ A. SAWYER ET AL., COMPLAINANTS & appellants,
v.
EDWARD TURPIN ET AL., RESPONDENT & appellees.

Opinion of the court delivered March 28th, 1873.

SHEPLEY, J.:

This is an appeal from so much of the decree of the district judge as directed the complainants to pay over to the respondents, Novelli and Company, the proceeds of the sale under order of court of a certain building described in the bill of complaint as situated on the northerly side of Exchange street in Lynn.

Certain real estate had been mortgaged by Jeremiah C. Bacheller, a bankrupt, whose assignees are the complainants, on the 27th day
28*d* of July, and the personal property, being the building above described, on the 31st day of July, to the defendant, Turpin, for and in behalf of the other defendants, Novelli and Company. These mortgages were given as collateral security for a debt due Novelli and Company from the bankrupt. They were given within four months of the filing of the petition on the 22d of October, on which Bacheller was declared bankrupt.

The district court found upon the evidence that at the date of these conveyances Bacheller was insolvent, and that the defendants had reasonable ground to believe him to be so. On this ground the court decided that the conveyance of the real estate mortgaged, on the 27th of July, was void, and ordered the proceeds of the sale of that property to be paid to the assignees. Upon examination of the evidence we see no reason to doubt the correctness of this portion of the decree or the accuracy of the conclusions upon which it is based.

28*e* If the chattel mortgage had been given under like circumstances, and upon similar considerations, the same consequences would have followed. The chattel mortgage differs from the mortgage of the real estate in the fact that it was given in substitution for a deed upon the same property which had been received prior to June 9th, and more than four months before the filing of the petition in bankruptcy. It is well settled that an exchange of security, even after the debtor is known to be insolvent, is perfectly valid, if the creditor by the exchange receives no more in value than he gives up. (Stevens v. Blanchard, 3 Cushing, 169.) It is argued that as the deed surrendered in exchange for the mortgage of same property had not been recorded, and no possession has been taken under it before the exchange of securities, that the rights of the creditor must be determined upon the state of facts as they existed when he took the mortgage of July 31st, and not at the date of the absolute deed of May 15th, which he surrendered.

29 The deed was valid as between the parties without possession or record. (Gen. statutes of Mass., ch. 151, sec. 1.) He might have taken possession of it any moment, or have recorded it at any time before the exchange of securities. The deed he surrendered before record was as good as the mortgage he received before that was

recorded. He obtained no other or greater security than he gave up. He could have recorded either of them and have perfected his rights as against creditors before any rights of creditors had intervened, and no rights of creditors had intervened when the exchange was made. The grantee does not appear to have been benefitted in a pecuniary way or the general creditors injured by the exchange, and there was, consequently, no unlawful preference.

Decree of district court affirmed.

30 At the hearing of said cause the following evidence was used, namely:

TESTIMONY ON BEHALF OF THE COMPLAINANTS.

Deposition of Josiah F. Kimball.

JUNE 16, 1870.

Int. 1. What is your name, age, residence, and occupation?

Ans. Josiah F. Kimball; twenty-seven years of age; of Lynn; foreman of the shoe manufactory.

Int. 2. Were you at any time in the employ of Jeremiah C. Bacheller, of Lynn, a bankrupt, of whose estate Messrs. Sawyer and Frazier are assignees?

Ans. I was from July, 1868, until September; some time in September, 1869, until his bankruptcy—I think it was September. I was there until his bankruptcy, whenever that was. I was at the store until I got employment elsewhere, which was about the time of the first meeting of the creditors in Salem.

Int. 3. While you were in the employ of Mr. Bacheller, was it any part of your duties to transact Mr. Bacheller's business at the custom-house in Boston?

Ans. It was.

Int. 4. Did you transact any business at the custom-house in Boston relative to the dealings between Novelli & Co., or Mr. Edward Turpin, their agent, and Mr. Bacheller? And if yes, state what business you thus transacted.

Ans. I did transact business there, and withdrew goods which came through the custom-house from Novelli & Co., and transferred goods to Mr. Turpin for Mr. Bacheller. I don't know as there was anything else. I warehoused or bonded and withdrew goods.

31 Int. 5. Give the history of the transfers of goods from Mr. Bacheller to Mr. Turpin.

Ans. May 7th, 1869, I transferred to Mr. Turpin what goods remained in bond at that time. I did it by orders of Mr. Bacheller, my employer. I not only transferred goods which were in bond at that time, but bonded another invoice that same day, which I also transferred to Mr. Turpin. The goods that were remaining in bond I took a memorandum of with me to Boston. These were imported at different times, and the transfer papers had to be made separately; that is, for each separate invoice of goods, but the transfer of the goods that were bonded that day was on the warehouse entry. I also bonded goods May 12th, which I transferred in the same manner to Mr. Turpin, on the warehouse entry. I bonded goods at other times, and I find the following entries on my memorandum-book; but I cannot say whether they are all the times. I bonded August 12th, 1869, eight cases per steamer Palmyra; also ten cases per steamer Aleppo. September 4th I bonded 5 cases per steamer Malta. I bonded and transferred all these cases. I believe that is all that I can

answer to that matter relative to any transaction with Mr. Turpin. There were other things which I did connected with Novelli & Co., such as freight and shipping charges, freight paid to the agent of the steamship line, and shipping charges on Novelli & Co.'s goods to George Warren & Co. I also bought bills of exchange, the first of which I sent to Novelli & Co., in Manchester, England, and the second to Mr. Turpin, in New York.

Int. 6. Whose bond was given whenever you bonded goods?

(Objected to, as the bonds will show.)

Ans. Mr. Bacheller swore to all the invoices but one; that one I bonded myself. Having power of attorney from him I gave bond to produce the owner's oath. Mr. Bacheller's bond was given in all cases but one; in that I gave my own bond; that was the one I spoke of to produce owner's oath. He would swear to the goods at the time they were bonded, and sometimes he would sign the bond, and sometimes I would under my power of attorney.

Int. 7. Did Mr. Turpin at any time give any bonds?

(Objected to.)

32 Ans. Not to my knowledge.

Int. 8. Who paid the freight and shipping charges and custom-house expenses on the goods purchased by Mr. Bacheller of Novelli & Co., bonded by Mr. Bacheller or yourself and transferred to Mr. Turpin?

Ans. Mr. Bacheller.

Int. 9. Was Mr. Turpin present at the custom-house when any of these transfers were made? If yes, what ones?

Ans. He was there at the time of the first one, but I think not at the time of any other.

Int. 10. Did he go with you to the custom-house?

Ans. He did on May the 7th, which was the first time.

Int. 11. Where did you meet him on that occasion?

Ans. I am not positive whether I came up with him from Lynn, or whether I met him in Boston. He was in Lynn that morning and we went to the custom-house together.

Int. 12. Where did he stay the night previous?

Ans. He stopped with Mr. Bacheller in Lynn.

Int. 13. Did you hear any conversation between Mr. Bacheller and Mr. Turpin with reference to said transfers?

Ans. I don't remember anything in particular any more than that the transfers were to be made.

Int. 14. Did you hear Mr. Turpin say anything as to why the transfers were to be made?

Ans. I have no remembrance of his saying anything that morning particularly.

Int. 15. How were the transfers from Mr. Bacheller to Mr. Turpin made?

Ans. I merely wrote this transfer on the face of the warehouse entry, on those that I bonded after the first day, May 7th; Stone & Downer's clerk did it for me that day. I didn't understand at that time how it should be done, and hadn't time that first day, but did it myself after that.

Int. 16. Were any of these goods transferred to Mr. Turpin as you have said, withdrawn from bond by Mr. Bacheller and sold by him?

33 Ans. There were.

Int. 17. What was the course of procedure adopted for that purpose?

Ans. I made out my withdrawal entry, and it was mailed to Mr. Turpin for his signature. After they were returned by him I withdrew the goods by Mr. Bacheller's signature, or mine as his attorney.

Int. 18. Did you know of any arrangement between Mr. Turpin and Mr. Bacheller with reference to such withdrawals?

Ans. I never heard any conversation between the two particularly in regard to it. I always supposed I understood it; that was, that if Mr. Bacheller could sell the goods he would send the withdrawal papers to Mr. Turpin as stated; that was the course pursued.

(Objected to from "that" to "pursued" as hearsay.)

Int. 19. If Mr. Bacheller for any purpose desired any of the goods in bond, what was done?

Ans. I simply made out my withdrawal papers, and sent them to Mr. Turpin for his signature; after he returned them I withdrew the goods by Mr. Bacheller's signature or mine as his attorney, and paid the duties on them; in almost all cases by my signature as attorney. I always sent the papers to Mr. Turpin by Mr. Bacheller's orders. He or Mr. Patch told me what cases were to be withdrawn, and I made out the papers accordingly.

Int. 20. Were there any withdrawal papers signed by Mr. Turpin in Mr. Bacheller's possession at the time of his failure?

Ans. There were.

Int. 21. For how many cases, and what became of said withdrawal papers?

(Objected to as incompetent, as the papers, if there are any, will show for themselves.)

Ans. There were three or five, I am not sure which. The papers were returned to Mr. Turpin.

(Mr. Dean, counsel for the complainants, requests of Mr. Ball, counsel for the respondent, the production of said withdrawal papers, that he may examine the witness with reference thereto, and put them in evidence.)

34 (Mr. Ball, counsel for said Turpin, says that he will ascertain if there are such papers, and if there are, will gladly produce them.)

Int. 22. How near the commencement of the proceedings in bankruptcy was it, when said withdrawal papers were returned to the defendant, Turpin?

Ans. I couldn't say; my memory does not serve me. I see by my memorandum-book that I withdrew goods along the latter part of July, 1869. It was some time after that, because I withdrew goods then, and I think also later.

Int. 23. Did Mr. Bacheller sign any withdrawal papers to enable Mr. Turpin to withdraw goods from the custom-house?

(Objected to as incompetent.)

Ans. Not to my knowledge.

Int. 24. What was the value of the cases of goods purchased by said Bacheller from Novelli & Co.?

(Objected to.)

Ans. I find by my memorandum-book that I cleared a case, No. 379, along the latter part of July. The duties on that were $466.65, gold, and I think that the duties on a case of lastings are not far from the value of the goods in gold on the other side. They are not far from $75 to $100 less than the value of the goods; that would vary some, according to whether the goods are fine or not. The rate of duty was fifty cents per pound and thirty-five per cent. at that time. A case of serges

would weigh much more than a case of lasting. I couldn't give the amount of value in dollars of the different cases, but I have the impression that most of the goods which came out after June 1st were invoiced at sixty-three or sixty-four shillings for fourteen-thread lasting—shillings sterlings.

Int. 25. State as nearly as you can the value of the lowest-priced goods invoiced from Novelli & Co. to Mr. Bacheller, per case, and also the highest.

(Objected to.)

Ans. From the time of my doing the custom-house business, which was, I think, from the latter part of April, I think the lowest sterling for fourteen thread was sixty-one shillings per piece—there were forty
35 pieces in the case—and the highest sterling was sixty-three or sixty-four shillings per piece; that is from the best of my recollection; it may not have been so high as sixty-four.

Int. 26. Were the bills of exchange sent by you to Novelli & Co., Manchester, England, and to Mr. Turpin, in New York, in payment of any specific bills of goods, or were they payments on general account?

Ans. They were not in payments of any special case or cases; they were acknowledged on the other side in this way; that is, they were acknowledged received, and placed to the credit of the account of J. C. Bacheller.

Adjourned to 9.45 a. m., Friday 17th, 1870.

FRIDAY, *June 17th*, 1870.

J. F. Kimball, continued.

(The direct examination is here closed, with the agreement that the witness may be recalled if desired.)

Cross examination:

Cross-int. 1. Whatever you did at the custom-house in respect to the goods, did you do by the order of said J. C. Bacheller?

Ans. I did on all occasions but one.

Cross-int. 2. When was that, and what was it?

Ans. When Mr. Bacheller was away, then I received my instructions from Mr. Patch.

Cross-int. 3. Was Mr. Patch Mr. Bacheller's book-keeper and having general charge of his business?

Ans. He was.

Cross-int. 4. Did you have a general power of attorney from said Bacheller?

Ans. The power of attorney covered business at the custom-house; it was a power to sign his name in all custom-house business.

36 Cross-int. 5. Is that power of attorney at the custom-house?

Ans. Yes, sir. The law requires it should be filed there.

Cross-int. 6. Do you recollect the date of the one occasion referred to in your answer to the first cross-interrogatory?

Ans. I do not. It was while he was in the country. What I meant by one occasion was while he was away. There might have been more than one occasion when I did business at the custom-house not by his order, while he was away; but I, by one occasion, meant the time of his absence.

Cross-int. 7. Did you inform him upon his return what you had done on that one occasion?

Ans. I had a conversation with him in regard to the business I transted while he was away.

Cross-int. 8. Did said Bacheller pay any custom-house expenses on goods which were entered and transferred to Turpin, and which were not withdrawn by said Bacheller, or only on those goods which said Bacheller withdrew from the custom-house?

Ans. He paid all expenses on all goods. I paid them myself, as a general thing, for Mr. Bacheller.

Cross-int. 9. What do you mean in your last answer, by all expenses? I refer now to custom-house expenses. What custom-house expenses do you mean that you or Bacheller paid?

Ans. I mean all expenses that the law requires; that is, the expense of bonding goods, or withdrawing goods. It is more than a year since I did any custom-house business, and those little items may not be fresh in my mind. There were stamps for the bond entry, and expenses to be paid the cashier, including the oath; remember that, but not all of them. Then there was another small expense; there has to be one or two cases of each invoice of merchandise imported to go to the appraisers, and we have to pay the trucking or freight on those cases to and from the appraisers' office in East Boston.

Cross-int. 10. You mean, then, when you say you paid all the custom-house expenses, that upon entering goods you paid the expenses required by law to be paid upon entry, and when you withdrew
37 goods you paid on the withdrawal the expenses required by law to be paid at that time, do you?

Ans. I do.

Cross-int. 11. What expenses did you pay on withdrawal when you withdrew goods?

Ans. I paid for stamp on withdrawal entry, and for permit to withdraw goods from the East Boston warehouse.

Cross-int. 12. Upon withdrawing the goods which you withdrew did you pay storage?

Ans. I did pay bills for storage from time to time, but I have the impression that at the time Mr. Bacheller went into bankruptcy there was a small bill left unpaid; but with that exception I paid all that were presented. They used to be sent once a month by the agent of the East Boston warehouse. Some we paid by mail, and some I paid personally at East Boston. These bills included labor and storage.

Cross-int. 13. Were all the goods fourteen-thread goods?

Ans. They were not.

Cross-int. 14. What other threads were there besides fourteen, if you remember?

Ans. They ran from a ten-thread, which was marked A. L., to an eighteen-thread, and were marked by the numbers of the threads respectively, with the exception of a seventeen-thread, which we had none of.

Direct examination resumed:

Int. 27. What is the date of the last business you did at the custom-house relative to goods imported by Mr. Bacheller, purchased of Novelli & Co.?

Ans. I couldn't tell without reference to some memorandum-book at home. The last entry on the memorandum-book I have with me shows that I bonded goods on September 4th, 1869; but I know that I withdrew goods after that, but haven't the date with me.

Int. 28. Were there any expenses of freight, insurance, or custom-house expenses unpaid on the goods withdrawn by Mr. Turpin?
38 Ans. I paid all freight and insurance. There were no further

custom-house expenses until the goods were withdrawn. All further expenses were for freight, labor and storage, stamp and permit to withdraw goods.

Int. 29. Who paid the expenses of bonding the goods withdrawn by Mr. Turpin?

Ans. I did, for Mr. Bacheller.

Int. 30. Did Mr. Turpin pay to Mr. Bacheller any moneys that Mr. Bacheller had paid on said goods for freight, insurance, or bonding them?

Ans. Not to my knowledge. There was nothing of the kind on Mr. Bacheller's books.

(Last part of answer objected to.)

JOSEPH F. KIMBALL.

Deposition of Ira J. Patch.

JUNE 17, 1870.

Int. 1. What is your name, age, residence, and occupation?

Ans. IRA J. PATCH; thirty-five years old; of Lynn; book-keeper.

Int. 2. Have you at any time been in the employ of Mr. J. C. Bacheller? If yes, for how long a time, and in what capacities?

Ans. I was with Mr. Bacheller while he was with Mr. Reed, from 1859 to 1867; and with him alone, from March, 1868, till September 6, 1869. Part of the time in the firm as book-keeper and part as salesman; with him alone, I was book-keeper.

Int. 3. Have you the account-current of the business between Mr. Bacheller and Novelli & Co.? If yes, please produce it.

Ans. I have the account-current here, from June 26, 1868, to July 24, 1869. (The account-current produced and put into the case, and marked Exhibit 1 A, B, C,—F. A.) They came either by mail from the foreign house, or from Mr. Turpin, at New York.

39 Int. 4. Does said account current include the goods transferred to Mr. Turpin and withdrawn by him? If yes, please mention the items of said goods.

Ans. It does. I think the cases which Mr. Turpin withdrew—(Mr. Ball objects to the witness stating anything except from his own knowledge, and requests the magistrate to caution the witness not to state anything else.) Under the ruling of the commissioner, I don't know that I can get any further with this answer.

(The commissioner had previously cautioned the witness as requested by Mr. Ball.)

Int. 5. Does said account current include any cases of goods which Mr. Bacheller did not withdraw from the custom-house, and which did not come into his possession? If yes, mention them.

Ans. It does not. The numbers of the cases range from 363 to 417. I think thirty-five cases. The cases are scattering in numbers, thirty-five cases in the whole; and those are enumerated in the schedule which was put into bankruptcy.

Int. 6. Can you give those numbers?

Ans. I don't think I have any data with me that I can give it accurately.

Int. 7. Where can you obtain the data?

Ans. I find I have it here in a book that I kept while I was with Mr. Bacheller, for my own convenience—numbers 363, 371, 374, 378, 382, 384, 385, 387, 388, 392, 393, 395, to 417, inclusive.

Int. 8. Who paid the freight and shipping charges on said cases of goods enumerated in your last answer?

Ans. The freight was either paid by check from the store of Mr. Bach-

eller, or by Mr. Kimball, by my directions, acting for Mr. Bacheller; I think the shipping charges were paid by Mr. Kimball in each case personally.

Int. 9. Who paid the expense of bonding said cases?

Ans. Mr. Kimball upon his return from his custom-house work made report of what expense he had paid; and it was repaid to him and charged to merchandise.

(Whole answer objected to as incompetent.)

40 Int. 10. Did such returns include the expense of bonding said goods?

(Objected to.)

Ans. It included all expense.

Int. 11. Were there any goods embraced in said account current, the expense of bonding which was not paid by Mr. Bacheller?

(Objected to.)

Ans. Not to my knowledge.

Int. 12. Why were not said goods withdrawn by Mr. Bacheller from the custom-house?

(Objected to.)

Ans. Well, I know of no reason, other than we had no use for them' not having sold them.

Int. 13. Do you know of any withdrawal papers being signed by Mr. Bacheller, or any one in his behalf, authorizing Mr. Turpin to withdraw said goods?

Ans. I do not.

Int. 14. Do you remember whether Mr. Turpin was in Lynn on or about May 7, 1869?

Ans. I think he was.

Int. 15. Was there any agreement entered into at that time, or arrangement made between Mr. Bacheller and Mr. Turpin, regarding lastings purchased by Mr. Bacheller from Novelli & Co., or regarding securing Novelli & Co.'s claim against Mr. Bacheller?

Ans. There was.

Int. 16. At whose suggestion was the arrangement made which was made? (Mr. Ball has no objection to the conversation, if witness heard any, between Mr. Bacheller and Mr. Turpin, but objects to the question in its present form.)

Ans. I don't think I can say positively.

Int. 17. Look at the letters now shown you, addressed to Mr. J. C. Bacheller, and signed "Novelli & Co., by Edward Turpin," or "Edward Turpin" alone, and state in whose handwriting they are, and whether they were received by Mr. Bacheller, and how—said letters bearing re-

41 spectively the dates, April 10th, 21st, 22d, and 26th, 1869, and May 1st, 4th, 15th, 20th, 26th, and 29th, 1869, and June 10th, 12th, 14th, 21st, 23d, 25th, 26th, and 30th, 1869, and July 7th, 15th, 21st, and 24th, 1869, and August 9th, 16th, 1869, September 15th, 18th, 23d, and 27th, 1869.

Ans. I believe them to be Mr. Turpin's, and they came to us in the regular course of the mail, to the store in Lynn. (Said letters are marked with the initials F. A., and put into the case.)

Int. 18. When Mr. Patch is referred to therein, who is meant?

Ans. Myself.

Int. 19. Was there, on said 7th of May, 1869, any conversation between Mr. Bacheller and Mr. Turpin on the subject of securing the claim of Novelli & Co. against Bacheller?

Ans. There was.

Int. 20. Please state, as fully as you can, the substance of said conversation.

Ans. Mr. Turpin had made complaints before, and did then, as to the amount of the remittances, and the arrangement was made for the transfer of all goods, then remaining in bond, and the goods that might come upon the old orders, to Mr. Turpin. There was also an arrangement made, in connection with that, to give Mr. Turpin security upon his, Mr. Bacheller's, real and personal estate, outside his business. In the course of the conversation, Mr. Bacheller, after this arrangement had been made, asked Mr. Turpin if he, Mr. Turpin, understood that he had liberty to sell these goods (that were to be transferred) to Mr. Bacheller's competitors. Mr. Turpin replied, certainly not; they are your goods, and as you sell I will sign the withdrawal papers, and return to you; that is, return the withdrawal papers. In the course of that conversation Mr. Turpin remarked that he wished to be able to show to the Manchester house that he held some security for the balance of the account, which was overdue and getting quite large.

Int. 21. Was there any difference stated between the purposes for which the goods then in bond were transferred and those that were after that time to arrive?

Ans. Not to my knowledge.

Int. 22. Were goods then in bond and goods that arrived afterwards withdrawn upon withdrawal papers signed by Mr. Turpin?

Ans. In each case that was withdrawn withdrawal papers
42 were filled, sent to Mr. Turpin for his signature, returned signed by him, and taken to Boston for entry by Mr. Kimball, and in due course the goods came to the store.

Int. 23. Was there any difference in the way said goods were treated, whether they were goods that were transferred on May 7th, or arrived afterwards?

Ans. Not to my knowledge.

Int. 24. Did any change take place on said May 7th, or afterwards, in the payments made to Novelli & Co.?

Ans. I think not.

Int. 25. Were all payments made on general account, or were they applied to pay for specific cases of goods?

Ans. On general account.

Int. 26. Were any papers made and executed at that time between Mr. Bacheller and Mr. Turpin?

Ans. Not that I knew of.

Int. 27. Were any papers after that time executed?

Ans. At one time in the month of June, I think during the first week of June, 1869, I bonded one invoice, and Mr. Bacheller executed a transfer of it to Mr. Turpin. During the month of May, 1869, a bill of sale of the store and two deeds of two parcels of real estate were executed by Mr. Bacheller, and were mailed to Mr. Turpin. The deeds and bill of sale ran to Mr. Turpin. Some time after mailing the documents to him, I received at the store a letter that he had not received them, and in a subsequent letter he suggested the executing of duplicates, which I think was done, although I am not positive. Some time, I think in May or June, this missing package turned up in New York, and on one of his visits to Lynn he brought the envelope. In July, Mr. Turpin brought on the deeds and bill of sale to be recorded, and I suggested to him that instead of recording those, he should take a mortgage in the case of each parcel and destroy the old deeds, which was done, and afterwards, I don't know at what lapse of time, the mortgages were re-

corded, and upon receiving them from record I sent them to Mr. Turpin. In the executing of these mortgages notes were given of the same date and amounts, and receipts taken for the mortgages and
43 notes as collateral. At the time of the single entry in bond that I made no papers had passed but the transfer on the warehouse entry. I think Mr. Turpin was then present.

Int. 28. To what were said mortgage-deeds collateral?

(Objected to, as if there is any receipt that will show.)

Ans. To the balance due on the regular general standing account represented by the account-current between J. C. Bacheller and Novelli & Co.

Int. 29. In any conversation between Mr. Turpin and Mr. Bacheller regarding said transactions, or any of them, was there any distinction made regarding the object and purpose of said deeds, bill of sale, mortgages, or said transfers of goods?

(Objected to.)

Ans. Not to my knowledge.

Int. 30. Was there any conversation regarding the recording of said deeds and bill of sale first given?

Ans. There was.

Int. 31. What was it?

Ans. In substance that there were already among the trade rumors and stories regarding Mr. Bacheller's condition, and which Mr. Turpin had heard, and if these documents should be recorded, it would immediately be known that this security had been given, and would increase the stories, so that it might materially affect Mr. Bacheller's credit, and perhaps prevent him from accomplishing his aim, which was to dispose of these goods that were here and were coming, and to pay up his debts; and it was arranged between Mr. Turpin and myself that at any time he desired it, and would mail the deeds to me, I would see that they were recorded and returned to him; and I think, at the same time, it was agreed that nothing should be said of this transfer of real and personal estate outside his business, outside of Mr. Bacheller, Mr. Turpin, and myself.

Int. 32. Look at this receipt of July, 1869, of a mortgage upon the Atwell property on Atlantic street for $5,000, of date July 27, 1869, as collateral on account, and these two other receipts, dated Lynn, August 11, 1869, of mortgages of July 31st, 1869, as collateral on account,
44 one on Bacheller-street property for $2,000, and one on Exchange-street property for $8,000, and state by whom they were given.

Ans. They were given by Mr. Turpin, and signed by him.

Int. 33. Were there any other receipts given by him?

Ans. Not to my knowledge.

Int. 34. What was the Exchange-street property, referred to in one of said receipts?

Ans. It was a double store, one of which Bacheller occupied in part. The balance of that one and the other were occupied by B. Dupar & Co. as a shoe manufactory; Mr. Bacheller owning the building on land leased by him.

Int. 35. You say in one of your answers that you believe the letters purporting to come from Mr. Turpin, and which have been shown to you, were written by him; have you any doubt of it?

Ans. I have none.

(Three receipts put in, marked Exhibit 2, A, B, C.—F. A.)

Int. 36. I find in the letters which have been put in, and to which

your attention has been called, suggestions for Mr. Bacheller to meet Mr. Turpin at the Tremont House, or other places in Boston; was there any conversation between Mr. Bacheller and Mr. Turpin upon the subject of their places of meeting, and if yes, what was it?

Ans. I don't recall any such conversations.

Int. 37. Did you ever hear either Mr. Bacheller or Mr. Turpin, and, if yes, which of them, say anything upon that subject?

Ans. I think I wrote to Mr. Turpin once, if not more, in answer to his letters, for him to come to Lynn. That was at Mr. Bacheller's orders; so that the interview might be more private than it would be if he should meet him in Boston. This latter clause relates to Mr. Bacheller's conversation with me in regard to the letter. I don't think it was in the letter.

Int. 38. Have you copies of your letters?

Ans. I am not positive that I took a copy of every letter I wrote, but when Mr. Bacheller failed, the letters were then copied into the letter-book; but where it is now I can't say.

Int. 39. Did you hear neither of them say anything else on the subject of the places of meeting?

45 Ans. I don't think I can give any specific conversation, but it was a matter that I understood that the frequency of these meetings might be kept as far as possible from the rest of the shoe-finding trade.

(Whole answer objected to as incompetent.)

Int. 40. Before these transactions to which you have testified, where did Mr. Bacheller usually see Mr. Turpin?

Ans. I don't think there was any regular place; sometimes at the store in Lynn, and sometimes he would speak to me about meeting him in Boston. A part of the year 1868 and part of the year 1869 we had an office in Boston.

Int. 41. Between what dates did you have an office in Boston?

Ans. We had one from the commencement of our business in June or July, 1868, till somewhere from April to June, 1869. Can't tell the exact date; it might have gone to the end of June. My impression is that we held the office here about one year.

Int. 42. At the time of Mr. Bacheller's failure did he have any withdrawal papers signed by Mr. Turpin? If yes, how many?

Ans. We had some, and I think it was five papers for a single case on each entry; one paper for each case.

Int. 43. When Mr. Turpin was written to for withdrawal papers, did he always send them?

Ans. I think he did, so far as my memory serves me now.

Int. 44. Were the obligations due to Novelli & Co., from J. C. Bacheller, met generally as they became due?

Ans. I think they were generally behindhand in being paid.

Int. 45. What were the terms on which their goods were purchased?

Ans. I think the prices were cash, and drew interest from the date of the invoices.

(Mr. Ball, in response to Mr. Dean's notice, produces three withdrawal papers, in duplicate.)

Int. 46. Look at the three withdrawal papers, and state whether you identify them as three papers in Mr. Bacheller's possession at the time of his failure.

Ans. I identify them as among those returned to Mr. Turpin, by the indorsements on the back, which I made myself.

46 Int. 47. When were they returned?

Ans. I think between September 18 and 30, 1869.

Cross-examination:

Cross-int. 1. What business have you been engaged in since September, 1869?

Ans. Part of the time in the shoe-finding business, and the balance in keeping books, as clerk.

Cross-int. 2. Did you personally pay, or see paid, any of the freight or shipping charges referred to by you?

Ans. I mailed checks to settle bills that we had received, and received receipted bills by mail, and received the checks through the bank paid.

Cross-int. 3. When you say that you did not know of any withdrawal being signed by Bacheller or any one in his behalf, authorizing Turpin to withdraw goods, you mean, I suppose, any paper besides those which were signed at the time of entry and transferred, do you not?

Ans. I meant, as I said, that I did not know of any papers authorizing Mr. Turpin to withdraw goods signed by Mr. Bacheller.

Cross-int. 4. Do you mean to swear that you didn't know that the goods were transferred to Mr. Turpin?

Ans. I did know of one invoice being transferred to Mr. Turpin by Mr. Bacheller in June, as I testified. I know also that did not authorize him to withdraw, from information I got at the custom-house; that it required the signature of both parties to clear goods, and that some time in conversation with Mr. Turpin and Bacheller, I made that statement to them.

(Adjourned to Wednesday.)

47 WEDNESDAY, *June* 22, 1870.

Cross-int. 5. Were you personally present when any goods were withdrawn by said Bacheller or said Turpin?

Ans. I think not; I have no recollection of any such.

Cross-int. 6. Where did the persons who purchased goods of said Bacheller carry on business?

Ans. Some in Lynn, some in Boston, Beverly, Newburyport, Portland, and somewhere in New York State—the place I don't remember now. Those were the bulk of the sales.

Cross-int. 7. Did you at any time purchase said Bacheller's stock of goods in Lynn; and if so, at what price?

Ans. I purchased September 6th, 1869. Part of the goods were taken at the cost, and the balance were taken at a small discount from cost.

Cross-int. 8. What did this purchase amount to in the aggregate?

Ans. Between ten and eleven thousand dollars, I think.

Cross-int. 9. State whether or not you paid for the stock so purchased.

Ans. I did.

Cross-int. 10. Do you know for what price said Bacheller sold the house in which he lived in Lynn to Benjamin F. Spinney?

Ans. I think about fourteen thousand dollars.

Cross-int. 11. Please examine the papers now produced, (marked Exhibits 4, 5, and 6,) and state whether or not they are the mortgages referred to by you in your direct examination.

Ans. I should think they were.

Cross-int. 12. Are you the Ira J. Patch whose name appears upon said instruments, and did you or not see the same executed by said Jeremiah C. Bacheller?

Ans. I am, and I did.

Cross-int. 13. Please examine the notes produced, (marked Exhibits 7, 8, 9,) and state whether or not they are the notes referred to by you

in your direct examination, as given by said Bacheller to said
48 Turpin, and state if any and which of them were executed in your presence.

Ans. They are two here which I was witness to. I think they are the three notes referred to by me in my direct examination. The two which I witnessed are numbered Exhibit' 8 and 9. Exhibit 7, the body is my handwriting; as to the execution of it I don't remember.

Cross-int. 14. Can you state about how much was owing said Bacheller for merchandise sold by him at the time that you bought his stock, not including what you bought? Also please state the same.

Ans. No, sir; I can't.

Cross-int. 15. State the amount inquired of, to the best of your recollection.

Ans. I can't fix upon any amount. I think there was no material change to the time of his schedule.

Cross-int. 16. Did you tell Lyman B. Frazier, in September, 1869, in substance, that said Bacheller could pay all his debts and have $15,000 to $20,000 left?

Ans. No, sir.

Cross-int. 17. Did you ever make that statement in substance to said Frazier?

Ans. I have no recollection of it. Sometime, early in the summer, in conversation with Mr. Frazier regarding Mr. Bacheller's affairs, in answer to a question from him, which I don't remember, I told Mr. Frazier I thought Mr. Bacheller could pay his debts and have something handsome left, but have no recollection of any amount being named.

Direct examination resumed:

Int. 48. At the time of the making of the deeds and bill of sale to Mr. Turpin, or at the time of the making of the mortgages of the real estate and the building on leased land to Mr. Turpin, did Mr. Bacheller own or hold any other real estate, or any other buildings on leased land; if yes, what?

49 Ans. At the time of the making of the first set of papers, the bill of sale and the two deeds, he owned a house and land on Atlantic street, in which he lived himself, and I think at the time of the mortgages being executed there was another building on Breed street. I am not sure but that building may have been built at the time of the other bill of sale and two deeds.

Int. 49. Was said house on Atlantic street encumbered; if yes, to what amount?

(Objected to.)

Ans. It was; some $5,000 or $6,000.

Int. 50. What became of said house on Breed street?

Ans. Sold on foreclosure of a mortgage, as I was informed.

Int. 51. Did Mr. Bacheller receive any money from the result of said sale; if yes, how much?

Ans. I never knew anything about the result—that is, the amount received at the sale.

Int. 52. Do you know of Mr. Bacheller's paying any money on account of any indebtedness not connected with his business?

(Objected to as not subject of re-examination.)

Ans. I think I do not. As to the amounts, I can't give them.

Int. 53. Where did the money come from?

Ans. I think part of it came from the proceeds of the sale of the Atlantic-street house that he was living in, and part from the proceeds

of the sale of the stock to me. The part from the proceeds of the sale of stock was in notes; the other in money.

Int. 54. When did you become aware of said outside indebtedness?

(Objected to as immaterial.)

Ans. I couldn't fix the date, but I should think some time in August, 1869.

Int. 55. When were the goods in bond May 7, 1869, and the goods bonded afterwards, ordered by Mr. Bacheller of Novelli & Co.?

Ans. As near as I can remember our lasting orders went out in 1868, with the exception of twenty-five cases, which went in January, 1869. As to whether any of the cases ordered in January, 1869, were included in the goods in question, I don't know.

Int. 56. How did the prices of said goods, in bond on May 7,
50 1869, and imported afterwards, as invoice to Mr. Bacheller, compare with the cost or prices of such goods if imported on new orders at said time?

Ans. The goods in bond and imported were nearly all invoiced at sixty-four shillings sterling for fourteen threads, a few being at sixty-three, and we received quotations for standards in May and June at fifty-eight for the same threads. Our goods in bond and imported were a specialty, for which they charged two shillings per piece more than for standards. Our quotations were received from other parties, competitors of Novelli & Co. We received from Novelli & Co. quotations up to the prices at which we received goods.

Int. 57. Was there any arrangement between Mr. Bacheller and Mr. Turpin as to the effect of said deeds and bill of sale first given, before they were to be recorded?

(Objected to.)

Ans. I don't know that there was in particular.

Int. 58. Did Mr. Bachellor apply to Mr. Turpin for his signature to any withdrawal orders, which was refused?

Ans. I never knew of any.

Int. 59. What was to become of said deeds and bill of sale if not recorded?

(Objected to.)

Ans. I can't say what was to be their destination. They were given as security, to be recorded at Mr. Turpin's pleasure, which I agreed to do for him, if he would send them to me, simply as security.

Cross-examination resumed:

Cross-int. 18. What make of goods were those ordered by said Bacheller of Novelli & Co.?

Ans. Foster's A goods, to distinguish from the standards, in that they were to be one inch wider, and made expressly for Mr. Bacheller.

Cross-int. 19. Was not Foster considered the best maker?

Ans. One of the best; for I understand there are others who claim to make as good goods.

51 Cross-int. 20. Were the quotations, which you received from other parties, Foster's goods or others?

Ans. The parties giving the quotations claimed to deal in Foster's standards.

Direct resumed:

Int. 60. State whether the difference of two shillings apiece was a regular difference between Foster's standards and the goods specially manufactured for Mr. Bacheller.

Answer. I understood it was.

Int. 61. Did said Bacheller, between May 7, 1869, and his bankruptcy, have any other property, to your knowledge, other than that already mentioned, his stock in trade, goods in bond, and bills receivable?

Ans. I never knew of any.

IRA J. PATCH.

Deposition of William A. Cochrane.

JUNE 24, 1870.

Int. 1. What is your name, age, residence, and occupation?

Ans. William A. Cochrane; forty years of age; of Boston; commission merchant.

Int. 2. Are you acquainted with Jeremiah C. Bacheller, of Lynn, and Edward Turpin, of New York; and have you had dealings with them?

Ans. Yes, sir.

Int. 3. When did you cease to sell goods to said Bacheller?

Ans. I don't recollect exactly. It was in April, 1869.

Int. 4. How came you to stop selling him goods?

(Objected to as immaterial.)

52 Ans. Well, questions arose at the time in regard to his responsibility. I sold him some goods at the time, and refused to deliver them.

Int. 5. Where were the goods when you refused to deliver them?

(Objected to as above.)

Ans. We had them in stock on hand.

Int. 6. Had or not the delivery been commenced, and how far had it proceeded?

(Objected to as above.)

Ans. We hadn't commenced to deliver them.

Int. 7. Had they, or not, been placed on the wagon for the purpose of delivery?

(Objected to.)

Ans. Yes, sir.

Int. 8. Did you, after you ceased trading with said Bacheller, have any conversation with Edward Turpin about it? If yes, state the conversation.

Ans. Had conversation with Mr. Turpin. He asked me if I sold him goods. I said I did. He asked me if I sold a certain bill. I told him I did. He asked me if I delivered it. I told him I didn't. He wanted to know why. I told him I doubted his responsibility. I don't know as there was anything more.

Int. 9. Did he explain to you how he happened to make this inquiry of you at that time?

Ans. Yes. He wanted to know the reason why we didn't deliver the goods.

Int. 10. Had he heard that you did not deliver the goods before he called upon you?

Ans. Yes, sir.

Int. 11. When was this conversation?

Ans. I think it was in April, 1869.

Cross-examination:

Cross-int. 1. What was the amount of the bill of goods referred to as bought by Bacheller?

53 Ans. I don't seem to recollect. We sold him two bills; don't seem to recollect the amount of the last bill.

Cross-int. 2. Did the bill amount to $8,000 or $9,000?

Ans. Yes, sir; I should think it did.

Cross-int. 3. On what term of credit was it sold?

Ans. Four months.

Cross-int. 4. Were the goods your own, or were you acting as salesman for Johnson & Thompson?

Ans. Acting as salesman for Johnson & Thompson.

Cross-int. 5. Had you heard, before the delivery was commenced, that Mr. Bacheller had given said Turpin security on some real estate?

Ans. No, sir.

Cross-int 6. Have you any means of fixing with accuracy the time when the goods were sold?

Ans. No, sir.

Cross-int. 7. Was not said Bacheller reputed, at or about that time, to be worth $75,000?

Ans. Yes, sir.

Cross-int. 8. Did he not tell you, after you failed to deliver the goods, that he was amply responsible?

(Objected to.)

Answer. Yes, sir.

W. A. COCHRANE.

Deposition of Lyman B. Frazier.

JUNE 24, 1870.

Int. 1. What is your name, age, residence, and occupation?

Ans. Lyman B. Frazier; forty-eight; shoe manufacturer, of Lynn.

Int. 2. Are you one of the assignees in bankruptcy of J. C. Bacheller?

Ans. I am.

54 Int. 3. Please look at the certified copies of the petition and schedules in the proceedings in bankruptcy, in the case of said Bacheller, now shown you, and state whether you have become aware of the existence of any property belonging to the said estate, not mentioned in schedule B.

Ans. There is no other property that we have found, except that in schedule B, to my knowledge.

Int. 4. How much money have the assignees realized from said estate?

(Objected to as immaterial.)

Ans. I have received about seven hundred dollars. Mr. Sawyer has received about one thousand; in all about seventeen hundred dollars. Out of what I received I have paid out between six and seven hundred dollars, to protect the property, as insurance, interest, and ground-rent. This does not include the proceeds of sale, under order of court, of the shop on Exchange street, and a house on Atlantic street, which, together, amounted to sixty-six hundred and fifty dollars, including the lease and the expenses.

Int. 5. What has become of the house and land on Breed street, Lynn, estimated on said schedule B, at $13,000, and mortgaged for $10,000?

Ans. The mortgage was foreclosed, and I bid it in. It is for sale at $10,000.

Int. 6. What is its value?

Ans. Well, I should think it was worth $10,000 to $11,000. Should think it worth $11,000. At auction it might bring from $8,000 to $9,000. Have been offered $8,000 for it.

Int. 7. What has become of the house and land on Bacheller street, in Lynn?

Ans. We have no title to it. We put it up, and there was no one at the auction. We found Mr. Bacheller had no title. There has been no deed passed. I am informed that Sophronia S. Speed sold it to him for $2,000, but her husband did not join in the deed.

Int. 8. What more, in your judgment, can be realized from the estate, without taking into consideration these suits?

(Objected to as immaterial.)

55 Ans. A very few hundred dollars. We have some promises, two notes, which a man promised to pay, but I have my doubts about it.

Int. 9. Look at schedule A, and state whether that is a correct schedule of Mr. Bacheller's indebtedness.

(Objected to as incompetent and hearsay.)

Ans. I couldn't say on this English bill, but I have seen most of the other men. The bills on damaged goring I don't consider true bills. They are in the schedule as breaches of warranty. The Wooldredge debt is a mistake of Mr. Bacheller's. I understand that Wooldredge does not claim anything from Mr. Bacheller. I have no reason to doubt any other claim.

Int. 10. Do you know of any substantial change in Mr. Bacheller's pecuniary condition between the first of April, 1869, and the time of his failure?

(Objected to as incompetent.)

Ans. There was a great deal of talk through April about Mr. Bacheller, and a report of his failure; then it died away. I can't say that I know of any change. He seemed to go along easy in the summer.

Int. 11. Did you at any time lend Mr. Bacheller any money, and take a mortgage as security therefor; if yes, when, how much, and for what purpose?

Ans. I did. Mr. Winters was pressing him on a bill that had been due some time; he came to me and wanted to hire ten thousand dollars; it was May 22, 1869. Mr. Winters was threatening suit. I let him have five thousand dollars that day, or a day or two before, and the rest within a day or two. The note was dated May 22d, I think, but am not certain. I let him have five thousand dollars when he gave me the note and mortgage, and gave him my memorandum for the other five thousand.

Int. 12. What was Mr. Bacheller's reputation for solvency in the months of April and May, 1869?

(Objected to as incompetent.)

Ans. There were a great many rumors; his friends, particular friends, believed in him.

Int. 13. What were the rumors?

56 (Objected to as above.)

Ans. Rumors that he was losing money at the gold board, rumors against his credit.

Int. 14. When did you first learn of the existence of his obligations to Novelli & Co.?

(Objected to as incompetent and immaterial.)

Ans. A few days before he failed. It might have been a week.

Cross-examination:

Cross-int. 1. Did you lend said Bacheller any notes in 1869, before you took a mortgage?

Ans. I don't think I did. I never lent him a note.

Cross-int. 2. Did you lend him any money in 1869, before the loan of five thousand dollars which you have mentioned?

Ans. I have lent him money, not over a thousand dollars at a time. Couldn't tell whether it was in 1869 or 1868. It was merely loans for a day or two, by a memorandum-check. There were only a few occasions when I lent him money in all.

Cross-int. 3. Did you ever take security for any of these loans?

Ans. No, sir.

Cross-int. 4. Did you endorse any note for him in 1869?

Ans. I don't recollect now of any but the mortgage-note. I might have.

Cross-int. 5. What obligations of his, to which you were a party, were outstanding at the time when you lent him the $5,000?

Ans. I don't know of any now.

Cross-int. 6. Will you swear, positively, that there were no obligations of his, to which you were a party, outstanding when you lent him the $5,000?

Ans. No, sir.

Cross-int. 7. Have you ever been connected with the National City Bank of Lynn; and if so, when, how long, and in what way?

Ans. About thirteen years, as a director; am still a director.

Cross-int. 8. What line of discount did said Bacheller have at said bank in 1869?

57 Ans. About thirty thousand dollars. That was about the average.

Cross-int. 9. Did said bank have any security from him for the notes discounted?

Ans. I think not; not to my knowledge.

Cross-int. 10. Do you know how late said bank continued to discount for him?

Ans. I should think till the last of the summer or first of the fall.

Cross-int. 11. Were you a director in that bank during the whole of 1869?

Ans. Yes, sir.

Cross-int. 12. Did you not recommend the giving him that line of discount?

Ans. I think I did. I was urgent for it.

Cross-int. 13. Do you recollect stating in substance that you had examined into Bacheller's affairs, that he could pay all his debts and have $15,000 or $20,000 left?

Ans. I recollect stating what he and his book-keeper told me. The president told me to inquire into his affairs. They told me he would have a certain sum, I won't say $15,000, left.

Cross-int. 14. Do you recollect when you made that statement?

Ans. No, I don't recollect; it was in the course of 1869.

Cross-int. 15. Was it before or after you took your mortgage?

Ans. I don't recollect.

Cross-int. 16. Did you not make that statement as late as August, 1869?

Ans. I couldn't say.

Cross-int. 17. When you made the statement, did you not name some considerable sum, $15,000 or $20,000, that he was worth more than his debts?

Ans. I did; that is the impression I had. I couldn't say that I said

$15,000 or $20,000, but I named some considerable sum, which was the impression I got from the two.

Cross-int. 18. What two do you mean?

Ans. Mr. Bacheller and his book-keeper, Mr. Patch—Mr. Ira J. Patch, I believe.

58 Cross-int. 19. Did you make that representation to the bank?

Ans. I did; whatever they told me.

Cross-int. 20. You say you paid out interest; interest on what?

Ans. I paid out interest on the $5,500 mortgage. There was some interest due on it when he failed, and the man was clamoring for it. This was on the Atlantic-street property. I paid about $400; I think a little more. I knew it would injure the sale to have him foreclose.

Cross-int. 21. Did you pay anything on the mortgage which was given to you?

Ans. No, sir.

Cross-int. 22. Did you buy the property mortgaged to you on the sale which you made of it after Bacheller went into bankruptcy?

Ans. I did.

Cross-int. 23. Do you recollect when that sale was made?

Ans. I don't. I had to give the proper notice in the papers; I think on or before January 1, 1870. It ought have been in December, 1869. I gave the proper notice.

Cross-int. 24. Did the amount which you bid for the estate, $10,000, pay for the amount due on the mortgage?

Ans. Yes, sir.

Cross-int. 25. Was there no interest on it?

Ans. No, sir.

Cross-int. 26. Was the mortgage note not on interest?

Ans. No, sir.

Cross-int. 27. In lending the money to Bacheller did you deduct out the interest?

Ans. I did.

Cross-int. 28. Did you, or not, tell the bank that you believed in the statement made by Patch and Bacheller to you?

Ans. I think I did.

Direct examination resumed:

Int. 15. What was the kind of paper discounted for said Bacheller, by said bank, within what has been termed his line of discount?

59 Ans. All first-class. He had the best paper of any man there. I offered to guarantee his loan after he failed for two hundred and fifty dollars. It was then from twenty to twenty-four thousand dollars. It was every cent paid without any delay.

Int. 16. Was it business paper?

Ans. Yes, of the best manufacturers in Lynn.

Cross-examination:

Cross-int. 29. In discounting paper did your bank, in common with others, require two good names?

Ans. That is what we intended, and intend to do.

Cross-int. 30. Did the paper which your bank discounted for Bacheller contain any names besides those of the maker of the notes and Bacheller endorsement?

Ans. A few did; but the majority of them had only Bacheller's name and the promisor's.

Direct examination resumed:

Int. 17. In discounting paper for said Bacheller, on what names were the chief reliance placed—the maker's or said Bacheller's endorsement?

(Objected to.)

Ans. A majority of the directors I know relied entirely on the promissors. They were very particular; they rejected a few towards the latter part of the summer, which they had never done before.

L. B. FRAZIER.

60 *Deposition of Ira J. Patch.—Recalled.*

JUNE 28, 1870.

Int. 1. Are you the Ira J. Patch who has already testified in this case?

Ans. I am.

Int. 2. Please examine the certified copy of the petition and schedule in bankruptcy of said J. C. Bacheller, and state whether they correctly represent said Bacheller's condition at the time of his bankruptcy.

Ans. The originals, of which this purports to be a copy, were made from the books which I had kept for Mr. Bacheller, and from some family bills which he passed to me, and I believe it contains all his indebtedness at that time, and states it correctly by the books and the bills. Mr. Bacheller, his counsel, and myself were together, and the schedules were made from figures made from the books by my direction. I didn't then and don't now know of any property which he had which is not correctly stated on the schedule.

Int. 3. Look at the letter now shown you, bearing date May 24, 1869, and state in whose handwriting it is, and how received by Mr. Bacheller.

Ans. I believe it was written by Mr. Turpin. Have no doubt but that it is his handwriting. It came in the regular course of mail, and in gathering the other letters this was overlooked.

(The letter put in and marked Exhibit 126.)

IRA J. PATCH.

Deposition of Edward Greey.

AUGUST 26, 1870.

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward Greey; age, thirty-five; residence, 323 West 50th street, New York; importer and commission merchant.

Int. 2. Have you at any time acted as an agent for Archibald
61 Turner & Co., of England, and, as such, have you transacted any business with J. C. Bacheller, of Lynn, the bankrupt in this case?

Ans. Yes.

Int. 3. Is said Bacheller indebted to said Archibald Turner & Co., and for how long a time has he been indebted to them, and to what amount?

Ans. He is indebted to us for goods sent in March and April, 1869. The amount in currency is about two thousand five hundred dollars. It was six hundred and sixty-two pounds sterling, nine shillings, and one penny, without interest, payable in gold. I should have said four thousand five hundred dollars in currency.

Int. 4. When was said indebtedness due and payable?

Ans. One account was due here in March, and one in April. They were cash transactions. We give no time in our accounts.

Int. 5. Did you make any efforts to collect said amount? If yes, what efforts and when?

(Objected to as immaterial.)

Ans. I saw Bacheller himself in May, and every month I came in since. I make a visit here about the 10th to 15th of every month. In June or July I pressed him very much. I pressed him both months. He offered to give some webs to the amount of my account, which I refused. [If he was unable to pay his accounts, I preferred waiting till he became a bankrupt to receiving the goods he offered me. I heard rumors affecting his standing, but he assured me he was able to pay if I would only give him time.] In September I came on and called on Mr. Bacheller; he told me that he should render me a statement of his affairs, and promised to do so the next day; this was about the tenth, I believe. I don't know the date. Early the next morning Mr. Turpin called on me with reference to Bacheller's business, at my hotel; asked me what I intended doing. I asked him what he knew about Bacheller's business, and he told me that he owed his (Turpin's) house something, but that he had always considered him perfectly sound, and would have trusted him to any extent; and he had heard from some source that we were the only other creditors, and he came to ask me what I intended doing. He said he was quite taken by surprise at Bacheller's offering to give a statement of his affairs.

62 (Part in brackets objected to.)

Int. 6. Did Mr. Turpin, at any time after that, say anything to you regarding his confidence in Mr. Bacheller's ability to pay; if yes, what?

Ans. Yes; he told me that he had had a great deal of trouble with Bacheller about payments, and he was afraid he should get into trouble with his house in consequence; said that Bacheller had been very much behindhand in his remittances, and that he hadn't received any money from him for some time.

Int. 6. Did he say anything to you, at any time, regarding any lastings that he had received from, or which had been made over to him, by Bacheller?

Ans. Yes; after the bankruptcy he gave me to understand that there were some lastings in the custom-house at Boston, about which he was waiting for instructions from his house. That must have been in January or latter part of December. It was about the last day of December or first of January. I understood from him that his goods were in the custom-house at Boston.

Int. 7. At the time Mr. Turpin told you of the trouble he had had with Bacheller, and of his backwardness in remitting, did he make any statement regarding any opinions he had entertained concerning Bacheller's ability to pay?

(Objected to form and substance.) Question withdrawn.

Int. 8. At the time Turpin told you of the trouble he had had with Bacheller, etc., did he say anything else that you can remember?

Ans. We had a general conversation about this matter. He didn't refer to any security he had received, though I had heard he had secured himself to a certain extent. He didn't touch upon security at all, or anything he had done in that matter.

Int. 9. Did he say anything concerning any opinions he had enter-

tained regarding Mr. Bacheller's solvency, or his financial condition before his bankruptcy?

(Objected to for form and substance.)

Ans. After the bankruptcy, when this conversation took place, he then told me that he had for some time been very much afraid of Bacheller's ability to pay.

63 Int. 10. Did you sell the goods to Mr. Bacheller; and if not, by what course of trading did he obtain them?

Ans. He ordered them direct of the house. He had been buying goods of us for several years, both when he was a partner with Breed, and when he was doing business on his own account.

Cross-examination:

Cross-int. 1. In the transactions between Archibald Turner & Co. and Bacheller, did he usually make remittances through you, or direct to your house?

Ans. By bills of exchange, endorsed to Archibald Turner & Co.; sometimes sent the first of exchange to me, sometimes direct. In any case the second was sent to me, to prove the debt had been paid.

Cross int. 2. How were said bills of exchange ordinarily drawn?

Ans. Well, I don't remember just now. It would make no difference to us whether they were at sight or on sixty days; they came sometimes one way, and sometimes the other.

Cross-int. 3. Were the goods which were sent by Archibald Turner & Co. their own production?

Ans. Yes, sir, their own manufactures.

Cross-int. 4. Is £662 9s. 1d. in sterling, the amount which said Bacheller owed Archibald Turner & Co.?

Ans. No; there is interest to add to it, which is the custom when the account runs over.

Cross-int. 5. But you swear that that is the amount of the principal, do you, in sterling?

Ans. Yes, sir, that is the amount, £662 9s. 1d.

Cross-int. 6. Did you not tell Mr. Turpin, or Mr. J. S. Chappell, in substance, that these proceedings should be withdrawn, so far as you were concerned?

(Objected to as immaterial.)

Ans. I remember telling Turpin or Chappell, probably both, that if they gave up their so-called securities, or the claims they had made for security, I should be willing to give up all proceedings.

64 Cross-int. 7. Will you swear that you did not tell Turpin or Chappell, in substance, that you would, so far as you were concerned, withdraw your name from any proceedings against them?

(Objected to.)

Ans. No; I have no remembrance of such conversation, only what I have said above. In the beginning of the conversation I told them they had better put their claims in again't the estate. Chappell asked me if we would give up proceedings. I told him, oh yes, if he would put all his claims in against the estate. I referred him to our lawyer. I told him we would do anything he liked, if they would put their claims in against the estate, so that we might have a chance to get something. I told him it was all in the hands of our legal adviser, and referred him to him.

Cross-int. 8. Will you swear that you did not tell said Turpin or Chappell, in substance, that you would direct your attorney to cease further prosecution, so far as you were concerned?

(Objected to.)

Ans. Only so far as I have stated before. I told them that if they would give us a chance to get something from this bankrupt estate, by turning their securities into it, we wouldn't oppose them in any way. That was the tenor of my conversation with both of them.

Cross-int. 9. Have you not, either in words or substance, told said Turpin or said Chappell, that you had no part in the prosecution of this suit, or given them to understand that it was being prosecuted without your countenance or influence?

(Objected to.)

Ans. I believe that Chappell asked me if I was bringing this suit. I told him he knew as well as I did that the suit was brought by the assignees, and that I had nothing to do with their action. He might have asked me a question about my sanction to the action of the assignees, but any reply I gave did not bear upon it as you put the question. He asked me a number of questions, some of which I answered, and some I didn't.

EDWARD GREEY.

65 *Deposition of Nathan Nichols.*

SEPTEMBER 19, 1870.

(Witness made affirmation.)

Int. 1. What is your name, age, residence, and occupation?

Ans. Nathan Nichols; age, fifty-four; of Salem; occupation, importation and sale of shoe-manufacturers' goods.

Int. 2. Do you know Jeremiah C. Bacheller, of Lynn, the bankrupt in this case? If yes, how long have you known him?

Ans. I have, for some fifteen years.

Int. 3. What was his business during the few years preceding his bankruptcy?

Ans. He was engaged in the importation and sale of shoe-manufacturers' goods.

Int. 4. What was his general reputation for solvency from the fall of 1868 to the time of his bankruptcy?

(Objected to for form and substance.)

(Counsel for assignees asked what the objection for form is. Mr. Ball says that the objection for form is because the witness is asked what the bankrupt's general reputation for solvency was.)

Ans. I do not know.

Int. 5. What was it among those engaged in the importation and sale of shoe-manufacturers' goods?

(Objected to.)

Ans. So far as my knowledge extends his credit was not good.

Int. 6. How early did that condition of credit begin, and how long did it continue?

(Objected to.)

Ans. It began as early as December, 1868, and continued to the time of his failure.

Cross-examination:

Cross-int. 1. Are you a creditor of J. C. Bacheller?

Ans. I am not.

66 Cross-int. 2. Did you ever sell him any merchandise?

Ans. I think not. I never sold him any goods so far as I recollect now.

Cross-int. 3. Did he ever apply to you to purchase goods on credit?

Ans. I think not.

tained regarding Mr. Bacheller's solvency, or his financial condition before his bankruptcy?

(Objected to for form and substance.)

Ans. After the bankruptcy, when this conversation took place, he then told me that he had for some time been very much afraid of Bacheller's ability to pay.

63 Int. 10. Did you sell the goods to Mr. Bacheller; and if not, by what course of trading did he obtain them?

Ans. He ordered them direct of the house. He had been buying goods of us for several years, both when he was a partner with Breed, and when he was doing business on his own account.

Cross-examination:

Cross-int. 1. In the transactions between Archibald Turner & Co. and Bacheller, did he usually make remittances through you, or direct to your house?

Ans. By bills of exchange, endorsed to Archibald Turner & Co.; sometimes sent the first of exchange to me, sometimes direct. In any case the second was sent to me, to prove the debt had been paid.

Cross int. 2. How were said bills of exchange ordinarily drawn?

Ans. Well, I don't remember just now. It would make no difference to us whether they were at sight or on sixty days; they came sometimes one way, and sometimes the other.

Cross-int. 3. Were the goods which were sent by Archibald Turner & Co. their own production?

Ans. Yes, sir, their own manufactures.

Cross-int. 4. Is £662 9s. 1d. in sterling, the amount which said Bacheller owed Archibald Turner & Co.?

Ans. No; there is interest to add to it, which is the custom when the account runs over.

Cross-int. 5. But you swear that that is the amount of the principal, do you, in sterling?

Ans. Yes, sir, that is the amount, £662 9s. 1d.

Cross-int. 6. Did you not tell Mr. Turpin, or Mr. J. S. Chappell, in substance, that these proceedings should be withdrawn, so far as you were concerned?

(Objected to as immaterial.)

Ans. I remember telling Turpin or Chappell, probably both, that if they gave up their so-called securities, or the claims they had made for security, I should be willing to give up all proceedings.

64 Cross-int. 7. Will you swear that you did not tell Turpin or Chappell, in substance, that you would, so far as you were concerned, withdraw your name from any proceedings against them?

(Objected to.)

Ans. No; I have no remembrance of such conversation, only what I have said above. In the beginning of the conversation I told them they had better put their claims in again't the estate. Chappell asked me if we would give up proceedings. I told him, oh yes, if he would put all his claims in against the estate. I referred him to our lawyer. I told him we would do anything he liked, if they would put their claims in against the estate, so that we might have a chance to get something. I told him it was all in the hands of our legal adviser, and referred him to him.

Cross-int. 8. Will you swear that you did not tell said Turpin or Chappell, in substance, that you would direct your attorney to cease further prosecution, so far as you were concerned?

(Objected to.)

Ans. Only so far as I have stated before. I told them that if they would give us a chance to get something from this bankrupt estate, by turning their securities into it, we wouldn't oppose them in any way. That was the tenor of my conversation with both of them.

Cross-int. 9. Have you not, either in words or substance, told said Turpin or said Chappell, that you had no part in the prosecution of this suit, or given them to understand that it was being prosecuted without your countenance or influence?

(Objected to.)

Ans. I believe that Chappell asked me if I was bringing this suit. I told him he knew as well as I did that the suit was brought by the assignees, and that I had nothing to do with their action. He might have asked me a question about my sanction to the action of the assignees, but any reply I gave did not bear upon it as you put the question. He asked me a number of questions, some of which I answered, and some I didn't.

EDWARD GREEY.

65 *Deposition of Nathan Nichols.*

SEPTEMBER 19, 1870.

(Witness made affirmation.)

Int. 1. What is your name, age, residence, and occupation?

Ans. Nathan Nichols; age, fifty-four; of Salem; occupation, importation and sale of shoe-manufacturers' goods.

Int. 2. Do you know Jeremiah C. Bacheller, of Lynn, the bankrupt in this case? If yes, how long have you known him?

Ans. I have, for some fifteen years.

Int. 3. What was his business during the few years preceding his bankruptcy?

Ans. He was engaged in the importation and sale of shoe-manufacturers' goods.

Int. 4. What was his general reputation for solvency from the fall of 1868 to the time of his bankruptcy?

(Objected to for form and substance.)

(Counsel for assignees asked what the objection for form is. Mr. Ball says that the objection for form is because the witness is asked what the bankrupt's general reputation for solvency was.)

Ans. I do not know.

Int. 5. What was it among those engaged in the importation and sale of shoe-manufacturers' goods?

(Objected to.)

Ans. So far as my knowledge extends his credit was not good.

Int. 6. How early did that condition of credit begin, and how long did it continue?

(Objected to.)

Ans. It began as early as December, 1868, and continued to the time of his failure.

Cross-examination:

Cross-int. 1. Are you a creditor of J. C. Bacheller?

Ans. I am not.

66 Cross-int. 2. Did you ever sell him any merchandise?

Ans. I think not. I never sold him any goods so far as I recollect now.

Cross-int. 3. Did he ever apply to you to purchase goods on credit?

Ans. I think not.

Cross-int. 4. Do you know of any person refusing him credit; and if so, whom?

Ans. I don't know for a certainty, although it was reported that Johnson & Thompson refused to deliver to them a large lot of goods after making a sale to them.

N. NICHOLS.

Deposition of Isaac B. Boyce.

SEPTEMBER 21, 1870.

Int. 1. What is your name, age, occupation, and where do you reside?

Ans. Isaac B. Boyce; age, thirty-five; merchant; residence in Lynn, Mass. My business is dealing in shoe-findings.

Int. 2. Are you acquainted with Jeremiah C. Bacheller, of Lynn, bankrupt? If yes, how long have you known him, and what was his business prior to his bankruptcy?

Ans. Yes, sir. I cannot state how long, but I have known him as a shoe-finder, and also in his business as a silk-dyer, before that. Have known him as long as I can remember.

Int. 3. What was his reputation for credit and solvency for the year previous to his bankruptcy in October, 1869?

Ans. His credit was doubted by some for nearly a year previous to that time.

Int. 4. Did his reputation in that respect improve or grow worse, up to the time of bankruptcy?

(Objected to.)

Ans. I don't think his credit improved at all, during the time.

67 (Answer objected to as incompetent.)

Int. 5. To what extent was his credit talked of among the trade of shoe-finders?

(Objected to.)

Ans. Very generally.

Int. 6. Did you ever have any conversation upon the subject of said Bacheller's credit with any member of the firm of Novelli & Co.? If yes, with whom, and when?

Ans. I have; since his failure, with Mr. Chappel—J. S. Chappel.

Int. 7. What was that conversation?

(Objected to.)

Ans. I can't state the exact conversation.

Int. 8. State all of it that you remember.

(Objected to.)

Ans. I asked him about the Bacheller claim, and laughingly told him he ought to have been as smart as Mr. Winter. He replied that the error was with Mr. Turpin in letting the goods out of his hands before getting the money. That is all that I can remember of the conversation.

Cross-examined by J. D. Ball, esq., for the respondent (de bene esse:)

Cross-int. 1. Did you ever have any dealings with J. B. Bacheller?

Ans. I do not know. I could tell by looking at the books. I suppose you mean dealings in trade.

Cross-int. 2. Do you recollect to have ever had any dealings with him?

Ans. I do not now.

Cross-int. 3. Did he ever apply to you for credit?

Ans. No.

Cross-int. 4. Do you know of any person refusing him credit?

Ans. I heard Mr. Winter say that Stansfield, Brown & Co. had refused him credit; also that Johnson & Thompson had reclaimed some goods after they were on the wagon to be delivered.

68 Cross-int. 5. Where did Stansfield, Brown & Co. do business?

Ans. In Bradford, England.

Cross-int. 6. Can you make any further answer to the 4th cross-interrogatory than that what you have made?

Ans. I do not think of anything further.

Cross-int. 7. Do you know of any other refusal of credit other than what you have stated as being heard by you, in answer to the 4th cross-interrogatory?

Ans. I don't think of any.

Cross-int. 7ª. Are you or have you been connected with any bank in Lynn?

Ans. I am not.

Cross-int. 8. Is your father; and with what bank, and how long?

Ans. He is with the First National Bank of Lynn, and has been for a great many years. I cannot exactly tell the time.

Cross-int. 8ª. Did said Bacheller have any trade with shoe-finders in this section?

Ans. I do not know that he did.

Cross-int. 9. Did he ever buy any goods of them, or did he buy his goods abroad?

Ans. I do not know. I presume he buys some goods here and some abroad, as all shoe-finders do.

Cross-int. 10. Was he not a competitor of the shoe-finders in this section?

Ans. He was.

Cross-int. 11. Do you know of his ever buying goods of them?

Ans. I do not.

Cross-int. 12. Do you know of his ever applying to any of them for any credit?

Ans. I do not.

Cross-int. 13. Did you ever hear of his applying to any of them for any credit?

Ans. No.

Cross-int. 14. Did you know or hear of any refusal to give credit to said Bacheller, besides what you have stated in your answer to the 4th cross-interrogatory?

69 Ans. I think not.

Re-examination by Benj. Dean, esq., for plaintiffs:

Int. 9. Were there any particular things done by Mr. Bacheller or rumors of such things among the shoe-finding trade which affected his credit?

Ans. There were; such as selling his merchandise at what I believe to be losing rates, and the sale of notes of his endorsement at high rates of discount.

Int. 10. Were there any regarding speculations in gold?

(Objected to.)

Ans. There were.

Cross-examination resumed, de bene esse, by J. D. Ball, esq., for respondent:

Cross-int. 15. Have you any personal knowledge of any sale, by Bacheller, of any merchandise at too low a rate, or any personal knowledge of what discount he paid on any of his notes?

Ans. I had, at various times, as I came in competition with him in the market. Our firm bought as good notes as the generality of the shoe-finders sell to, with his endorsement, at ten per cent. discount.

Cross-int. 16. When was that?

Ans. November 11, 1868.

Cross-int. 17. Have you any personal knowledge of any sale by Bacheller of any merchandise at too low a rate, or do you, in giving your testimony on that subject, only mean to say that you heard from persons to whom you offered your goods that Bacheller had offered his to them at less prices?

Ans. I have not a personal knowledge. My knowledge comes as stated in the last part of the question.

Cross-int. 18. To what amount did you buy notes with Bachellor's endorsement on November 11, 1868?

Ans. Seven thousand dollars.

ISAAC B. BOYCE.

70 TESTIMONY TAKEN TO BE USED IN SAID CAUSES IN BEHALF OF THE RESPONDENTS.

Deposition of Edward Turpin.

SEPTEMBER 22, 1870.

Int. 1. What is your name, age, residence, and occupation?

Ans. Edward Turpin; age, forty-seven; of Brooklyn, New York; agent representing Novelli & Co., of England, in their general business here as commission merchant.

Int. 2. State when you entered the employment of Novelli & Co., and where you have been located while in their employment; and as to your agency, whether you have been their general agent or otherwise in the United States.

Ans. I entered their employment April 2, 1868. Our office is in New York, and I visit Boston once in every three or four weeks for from four to ten days. I am their general agent, and have been, in the United States.

Int. 3. Please state where the members of the firm of Novelli & Co. live and have lived since you entered their employment.

Ans. Mr. Novelli himself lives in London, England. Mr. Bowker and Mr. Koenig live in Manchester, England. They have lived there all the time since I entered their employment.

Int. 4. Please state what has been the business of Novelli & Co. since you entered their employment; and what had been their business previously, if you know.

Ans. Their business is that of commission merchants, and has been such since I entered their employment, and was before.

71 Int. 5. Please state a little more in detail what has been their busines since you entered their employment, and what it was previously.

Ans. Their business is to take orders from importers to buy from the manufacturer or merchants such goods as they may receive orders for; assuming the responsibility of payment for the same to the manufacturer or merchant of whom they buy the goods, and charging their customers two and one-half per cent. for doing the business. Their business is entirely foreign, embracing the whole of the United States.

Int. 6. Do you know Jeremiah C. Bacheller, of Lynn, the bankrupt in this case, and how long have you known him?

Ans. I do; since April, 1868.

Int. 7. When you first became acquainted with him, in what business was he, and whether alone, or connected with some other person, and what?

Ans. He was in the shoe-finding business, connected with another person, George F. Breed.

Int. 8. Do you know how long his connection with Breed continued after that? If so, please state.

Ans. It continued until the 20th or 22d of June following.

Int. 9. State whether or not said Bacheller and Breed had business transactions with Novelli & Co., and what was the partnership style of Bacheller and Breed, and about how long before the partnership of Bacheller and Breed ceased had they had dealings with Novelli & Co.?

Ans. They had dealings with Novelli & Co. The style of the firm was J. C. Bacheller & Co. They, Novelli & Co., had done business during the whole of the time with that firm; and some time before Mr. Breed was taken into it with J. C. Bacheller alone. I think it must have lasted eight years. During the whole of that time Novelli & Co. did business with them.

Int. 10. State whether or not, since the dissolution of the firm of J. C. Bacheller & Co., said Bacheller alone has had any dealings or transactions with Novelli & Co., and what? State generally.

Ans. He has; he has ordered goods at different times, which
72 have been bought by Novelli & Co., on his account and shipped. Their terms for doing that were two and one-half per cent. commission, paid for the goods on the other side, allowing him the manufacturer's discount, and charging interest at the rate of five per cent. per annum from the date of invoice, upon the agreement that they received a sterling bill of exchange upon London or Manchester within sixty days from the date of invoice.

(Answer objected to.)

Int. 11. On whose credit or responsibility did Novelli & Co. order the goods of the manufacturers or sellers for said Bacheller?

(Objected to.)

Ans. Upon their own credit and responsibility. The manufacturers looked to them alone for payment, they not knowing any other party in the transaction.

Int. 12. State whether or not, on any of the orders Novelli & Co. were to receive any greater or other commission, or any greater or other rate of interest then what you have stated.

(Objected to.)

Ans. They were not.

Int. 13. Please state whether or not you had any information, and if so what, and from whom, and when obtained, as to the value of said Bacheller's interest in the firm of J. C. Bacheller & Co., at the time of its dissolution.

(Objected to.)

Ans. I had, from George F. Breed, I think in August, 1868; he told me that Bacheller had taken out $30,000 (thirty thousand dollars) as his portion at the dissolution.

(Answer objected to.)

Int. 14. State whether or not said Bacheller afterwards, and prior to September 6th, 1869, made any statements to you as to his property, means or ability, or as to what he owed, and when or about what time, and what statement.

(Objected to.)

Ans. He did make several. Early in July, 1868, the 1st or 2d, he told me that he was worth from seventy-five to eighty thousand dollars.
73 In August, of the same year, he told me he had all the money he required for the business he was going to do, and that he would remit promptly. In October, of the same year, he told me he had ample means for the business he was going to do; that he had fifteen thousand dollars out on mortgage in Lynn that he was going to call in next month and put into his business; at the same time he stated that he had twenty-six cases of our goods, three cases of Stansfield, Brown & Co., two cases of Thornton, Homan & Co., besides some cases of gorings, all in bond, and all of which were paid for, excepting ours. On the 24th March, 1869, he showed me a quantity of notes that he had received from his customers, and said they were worth from $25,000 to $30,000 and that many of them were just maturing. On the 6th of May, 1869, I met him and he invited me down to his house in Lynn, to spend the night, which he had done several times before. I went down, and met him at his store in Lynn. In conversation I remarked that his competitors said he was selling lastings at a low price. He said no, that many of them were underselling him, and referred me to his book, in which he entered his sales. I saw several entries of goods, with which I was perfectly satisfied with the prices at which he had sold them. I then suggested that, as his account was so much overdue, the goods in bond should be transferred to me, which he agreed to. He also added that he could give me some security, if I desired it, and proposed to give me conveyances of eight thousand dollars upon his store in Exchange Place, two thousand dollars upon his Bacheller-street property. The conveyances were afterwards executed. At the same time he told me that his stock, which had just been taken in Lynn, was worth twenty thousand dollars; that his house and some property opposite was worth twenty thousand dollars; that his store and Bacheller-street property was worth from ten to twelve thousand dollars; that, altogether, he had fifty thousand dollars' worth of real estate, unencumbered. At the same interview he agreed that all future goods arriving should be transferred to me at the time of entry. On the next morning, the 7th, we went down to the custom-house, in Boston. Twenty-two cases of goods, then in bond, were transferred to me; and seven cases, numbers 370 to 376 inclusive, were entered and transferred at that same time. The twenty-two cases
74 referred to, transferred at that time, of which case No. 363 formed a part. Case No. 363 was entered on the 4th of May, 1869. Under the agreement entered into on the 6th, he should have the privilege of selling any of these goods in bond, but the whole of the proceeds of said sales was to be remitted to Novelli & Co., and that if he sent me withdrawal notes I would return them signed. It was also agreed that if I would send him any future invoices and bills of lading he would attend to the entering at the custom-house, and transfer them to me at the time of entry, so as to save time and expense. On June 24th, 1869, he entered cases Nos. 377 to 394 inclusive, and transferred them at the same time to me, as agreed upon, I having sent him the bill of lading and invoice a few days before. On August 12th, 1869, he entered and transferred to me cases Nos. 395 to 412 inclusive, I having sent to him, a few days before, invoices and bills of lading for that purpose, as before. September 4th, 1869, he also entered and transferred to me cases Nos. 413 to 417 inclusive, as agreed upon, I having sent him invoice and bill of lading for that purpose.

(The counsel for the complainants objects to the answer, but waives any objection that the answer is not responsive.)

Int. 15. At said interview of May 6, 1869, did said Bacheller make any statements to you as to his liabilities, or what debts he was owing; if so, what did he say to you upon the subject?

Ans. He did. He said that he owed Archibald Turner & Co. £300. Stansfield, Brown & Co., £1,000. Our own indebtedness and a few small domestic debts was all he owed.

Int. 16. Can you give the numbers of the twenty-two cases of which you say No. 363 was a part?

Ans. I can't from memory, but I can from the copies which were given me of the cases in bond at the time, which was May, 1869. The numbers are 341, 344, 346, 351, 352, 353, 354, 355, 356, 357, 358, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369—those are the twenty-two cases. Upon the same list are the cases from 370 to 376 inclusive, which has previously been referred to as entered and transferred at the same time, May 7, 1869.

Int. 17. When was case No. 363 entered?

75 Ans. May 4th, 1869.

Int. 18. When, and on what day, was it transferred to you; and by whom, and where, and on what?

Ans. It was transferred to me on the 7th of May, at the custom-house, in Boston, by J. C. Bacheller. I think on the entry-books there.

Int. 19. When, and by whom, and to whom were the cases, marked Nos. 370 to 376, inclusive, 377 to 394, inclusive, 395 to 412, inclusive, and 413 to 417, inclusive, transferred?

Ans. Nos. 370 to 376 were transferred by J. C. Bacheller, on May 7th, 1869, to myself, Edward Turpin; Nos. 377 to 394 were transferred at the custom-house, June 4th, 1869, by J. C. Bacheller, to Edward Turpin. Cases 395 to 412 were transferred August 12th, 1869, at the custom-house, by Mr. Josiah F. Kimball, as attorney for Mr. Bacheller, to myself, Edward Turpin; Nos. 413 to 417 were transferred September 4th, 1869, at the custom-house, Boston, by J. C. Bacheller, to Edward Turpin.

Int. 20. Where were said transfers made, and how, as compared with the time of entry?

Ans. The transfers were made at the custom-house, Boston, on the entry, at the time the goods were entered.

Int. 21. Which of said cases were withdrawn by you, and when and by whom were the others withdrawn?

Ans. Cases 363, 370 to 417, inclusive, (objected to as appearing of record in the custom-house,) were in the custom-house. I withdrew 363, 371, 374, 378, 382, 384, 385, 387, 388, 392, 393, and 395, to 417, inclusive. I signed withdrawal notes for Mr. Bacheller to withdraw for the balance.

Int. 22. From whom did the goods come which were so transferred to you?

Ans. From Novelli & Co., England.

Int. 23. Did any of them come from any one else?

Ans. None.

Int. 24. To whom did the bills of lading and invoices of the goods transferred to you come?

76 Ans. To Novelli & Co., of New York. I received them there as their representative.

Int. 25. How did the bills of lading run, and where are said bills of lading now?

(Objected to.)

Ans. The bills of lading ran, "Shipped through George Warren &

Co., Liverpool;" they being the parties through whom Novelli & Co. shipped the goods "to order," and endorsed by "George Warren & Co." The bills of lading said "to order," with a blank space left.

Int. 26. How much, or about how much, time elapsed between the time of your sending the bills of lading to said Bacheller to enter and the time of entry?

Ans. Just sufficient time to copy the invoices—two or three hours—excepting in one or two cases, where he had them in the evening, and the goods were entered the following morning, after the opening of the custom-house.

Int. 27. You have not stated when you withdrew the goods which you did withdraw. Will you now state when you withdrew them?

Ans. I withdrew them October 13th, 1869.

Int. 28. Upon withdrawing them did you pay anything; and, if so, what?

Ans. I paid duties, warehouse charges, and cartage.

Int. 29. Did said Bacheller pay any of the duties or warehouse charges on the said goods which you withdrew?

Ans. Not any.

Int. 30. State whether or not said warehouse charges which you paid included storage on the goods in the public warehouses; and, if so, from what time?

Ans. They did, from the whole time they were there—from the time of entering to the time of withdrawal. I mean from the time of entering the warehouse.

Int. 31. State whether or not the duties which you paid on the goods withdrawn by you and the warehouse charges you paid were the duties and warehouse charges on all the goods or on only a part of those which you withdrew?

Ans. They were duties and warehouse charges on the whole
77 of the goods which I withdrew, and the whole of the duties and warehouse charges upon these goods.

Int. 32. Upon the entry of said goods which were transferred to you what was done with them; where were they taken or put?

Ans. Upon being taken from the ship they were put into the bonded warehouse in East Boston, and they remained until taken out on the 13th of October, 1869.

Int. 33. By my last question I meant to include all the goods which were transferred to you—those which you withdrew and those which said Bacheller withdrew. Does your last answer relate to all, or only those which you withdrew; and what course was taken with those which you did not withdraw?

Ans. My last answer only applied to the goods that I withdrew. The other goods, the balance of what was transferred, I signed withdrawal entries for, and Mr. Bacheller withdrew them, paying the duties and warehouse expenses upon that portion, and delivering the goods to his, J. C. Bacheller's, customers, from whom he had taken orders, under the agreement that we had made on the 6th of May, 1869.

Int. 34. On the entry of those goods which said Bacheller transferred to you, and which he afterwards withdrew upon withdrawal orders, what course was taken with them? Where were they put?

Ans. They were left in the bonded warehouse until he had taken orders for them. He then sent withdrawal entries to me in New York for my signature, which I signed and returned to him, and he then withdrew the goods.

Int. 35. Did said Bacheller furnish or have any interest in either the

whole or any part of the moneys which you paid for duties and ware house charges on said goods which you withdrew?

(Objected to.)

Ans. None whatever.

Int. 36. Did said Bacheller return to you any of the withdrawal orders which you sent him? If yes, how many in all?

Ans. He returned me three which I had signed and sent to him. They are in duplicate, and are the same which have been put into this case before.

78 Int. 37. How did the value of the cases for which you sent Bacheller withdrawal orders, and which he withdrew, compare with the amount of money which paid Novelli & Co., after May 7, 1869?

(Question objected to.)

Ans. I can tell pretty nearly; can't give the exact amount. The value of the goods withdrawn exceeded the remittances from Bacheller to Novelli & Co. over £400, but not exceeding £500. That doesn't include the whole of the withdrawal orders. They were returned to me by him.

Adjourned.

FRIDAY, *Sept.* 24.

Int. 38. State whether or not said Bacheller or any other person ever returned to you any of the withdrawal orders sent by you to said Bacheller, except the three which you have mentioned.

Ans. I had one other returned, in consequence of Mr. Kimball having accidentally torn off my signature. It was returned to me with a blank for my signature, to replace it. I had none other returned to me.

Int. 39. State what you did upon the return to you of the one with the signature torn off.

Ans. To my best recollection I destroyed it.

Int. 40. Was it replaced?

Ans. It was replaced by the blank which I named in my other answer, and which was reposted to Mr. Bacheller.

Int. 41. In sending the bills of lading to said Bacheller, which you have referred to, did you fill in any name in them, or in what condition were they when sent by you to him for entry?

Ans. I did not fill in any name. They were in the condition I received them. On the face was George Warren & Co.'s name as shippers, and "to order" in blank. On the back they were indorsed by George Warren & Co.

Int. 42. When did you send said Bacheller the bill of lading which embraced said case No. 363?

Ans. I posted it in New York, on the 1st of May, 1869, to his address in Lynn.

Int. 43. Please state whether or not, in the interview on May 6th, 1869, to which you have referred, said Bacheller stated anything
79 to you; and, if so, what, in respect to his building, or in respect to any goring in bond.

Ans. Yes; Mr. Bacheller told me he was about building a house upon some land he owned opposite to his own house, for his intended son-in-law, Mr. Kimball. He also told me that he had in bond £2,300 worth of goring, £2,000 of which was paid for.

Int. 44. Did he state whether or not this £2,300 of goring was or was not included in the $20,000 stock on hand?

Ans. He said he had that in addition to his stock of $20,000. The

$20,000 embraced the stock in his store in Lynn, comprised not wholly of gorings, but of general shoe-finding materials, such as threads, linings, galloons, etc.

Int. 45. Do you know whether or not said Bacheller did build a house for his intended son-in-law, and whether or not his intended son-in-law occupied it?

Ans. Mr. Bacheller told me that he had built the house, and that his son-in-law had entered into it.

Int. 46. About what time did he make that statement to you?

Ans. Some time in July, 1869.

Int. 47. State about how much said Bacheller was owing Novelli & Co. on May 6, 1869.

Ans. As near as I can recollect, altogether about £4,000 sterling. There was £3,000 overdue.

Int. 48. At what times was said Bacheller credited by Novelli & Co. with remittances?

Ans. At the time of their receipt in Manchester, England.

Int. 49. Will you please state how much said Bacheller owes the firm of Novelli & Co.?

Ans. I can't give the exact amount from memory, but I can by the account. On October 20th, 1869, he owed Novelli & Co. five thousand six hundred and fifty-two pounds, sixteen shillings and ten pence.

Int. 50. Will you please annex to your testimony, as a part thereof, the account referred to by you in your last answer?

Ans. Yes, sir, I do so.

80 (The account, which is in two sheets, put in and marked Exhibit 10, A and B.—F. A.)

Int. 51. Has any part of said account been paid?

Ans. No, sir; not any.

Int. 52. Are any of the cases, which you withdrew from the custom-house, mentioned in said account which you have produced?

Ans. No, sir; not any.

Int. 53. Were any of said goods which you withdrew from the custom-house paid for either in whole or in part by said Bacheller?

Ans. No, sir, neither in any part or the whole.

Int. 54. If you should apply the remittances from said Bacheller to the oldest items of debit on the account of Novelli & Co. against him, upon that theory down to what time would the remittances have paid the account?

Ans. They would not pay beyond the 9th of March, 1869.

Int. 55. How in time, as compared with March 9, 1869, were the goods which you withdrew charged to said Bacheller, and forwarded to the United States?

Ans. The first or oldest would be invoiced a month after the time that these remittances covered or paid for. That is, the invoice would be dated probably April 8th or 9th, 1869. The balance was invoiced after that time.

Int. 56. In sending withdrawal orders to said Bacheller upon which he withdrew the goods, did you have any security that he would remit the proceeds, beyond his promise and agreement?

Ans. No, sir; I had not.

Int. 57. Did he remit the identical proceeds, or did he remit from time to time from his funds generally?

Ans. He did not remit the net proceeds, the identical proceeds; but did remit from time to time from his general funds.

Int. 58. In what month and year did said Bacheller fail?

Ans. I think it was in October, 1869.

Int. 59. Please examine the mortgages and notes previously put into this case now shown you, marked respectively Exhibit 4, 5, 6, 7, 8, 9, each F. A., and state when they were delivered to you.

81 (Question objected to.)

Ans. The mortgage and note dated July 27, 1869, were handed to me on the 28th of July, 1869, by Mr. J. C. Bacheller. The two mortgages and notes dated July 31st, 1869, were delivered to me on the 17th or 18th of September, 1869, by one of the clerks of the Tremont House, Boston, having been left there for me.

Int. 60. What, if anything, was done by you previously with said mortgages dated July 31st, 1869; and whether you took any, and what, steps to record them?

(Objected to.)

Ans. I had done nothing with the mortgages of July 31st, 1869. I left some deeds with Mr. Ira J. Patch, Mr. Bacheller's clerk, which had been previously given to me, for him to have recorded as promised; when he said they would require some little alteration. I left them with him, and in place of those he returned me these of July 31st, after having them recorded.

Int. 61. On what property were those deeds which you left with him and in the place of which he returned you the mortgages of July 31, 1869?

(Objected to.)

Ans. One was on his store in Exchange street, and the other on the Bacheller-street property.

Int. 62. Were the deeds which you so left on the same or on different property from that described in the mortgages of July 31st, 1869?

(Objected to.)

Ans. They were on the same property.

Int. 63. State whether or not said deeds which you say you left, and for which you received the mortgages of July 31st, 1869, were absolute deeds, or mortgages?

(Objected to.)

Ans. I understood them to be deeds.

(The counsel for the respondent gives notice to the counsel for complainant to produce said deeds. The counsel for complainant says that his clients, the assignees, have no such deeds.)

Int. 64. When did you get said deeds which you so left with

82 said Patch, and in exchange for which the mortgages of July 31, 1869, were given you?

(Objected to.)

Ans. I think it was some time during the first week in June, 1869. The originals miscarried by post. When I received them they bore the Lynn post-mark of May 17th, 1869.

Int. 65. When, or about what time, did you receive the said originals?

(Objected to.)

Ans. I think it was the 20th of June, 1869.

Int. 66. Please explain what you mean by receiving some the first week in June, and the originals June 20th, 1869. How many sets did you receive in all?

(Objected to.)

Ans. The originals miscarried by post; in the mean time duplicates were made out of them by Mr. Patch, and forwarded to me. These, the

duplicates, I received the first week in June, 1869; the originals came to hand, through the post, about the 20th of June, bearing the Lynn post-mark of May 17th. I received four deeds in all, duplicates and originals included.

Int. 67. Do you mean four in all, including the conveyance of July 27th, 1869, or four in addition to that?

(Objected to.)

Ans. four in addition to that.

Int. 68. Can you state positively before what day in June, 1869, you received said duplicates?

(Objected to.)

Ans. I received them before the 9th day of June, 1869.

Int. 69. Please state how the deeds which you call duplicates were; whether they were executed and acknowledged by said Bacheller, or were mere copies of papers, and his signature?

(Objected to.)

Ans. They were executed and acknowledged by Jeremiah C. Bacheller. One of them was also signed by his wife.

Int. 70. Then they were not mere copies, but originals executed by him?

83 (Objected to.)

Ans. Yes, they were originals, upon the understanding that, if the four turned up, two were to be returned to him.

Int. 71. State whether or not you were in Lynn on July 31st, 1869; and if so, whether you saw said Bacheller and Patch at that time, and what occurred on that day.

(Objected to.)

Ans. I was in Lynn on July 31st, 1869, and saw both Mr. Patch and Mr. Bacheller, and I told them that I was going to have the deeds registered; when Mr. Patch said they would require some little alteration. I gave them to him for that purpose. Mr. Bacheller and I went up to his house; had tea; returned to the store during the evening, when Mr. Patch gave me the mortgages, remarking that one of them required recording in Salem, and that if I would leave them with him he would have them both recorded on the following day, and send them to me. I also left a third mortgage, the one of July 27th, 1869, with him for the same purpose, which had been given me on the 28th July, by Mr. Bacheller, in New York.

Int. 72. Which mortgages did said Patch give you on the evening of July 31st, 1869, and in what condition were they then?

(Objected to.)

Ans. Those dated July 31st, 1869. They were in the condition they are now, excepting not being recorded, which has now been done.

Int. 73. State whether or not, at that time, July 31st, 1869, when said Patch gave them to you, they had been executed, and the one on the real estate acknowledged; or how otherwise?

(Objected to.)

Ans. I understood them to be executed and acknowledged. They were given to me as perfect, and were just as they appear at present.

Int. 74. When did you next see them?

(Objected to.)

Ans. I think it was the 14th of September. I can give it to you exact. It was the 16th or 18th of September, 1869. It was the 18th.

Int. 75. Where did you see them then?

(Objected to.)

84 Ans. At the Tremont House, Boston.

Int. 76. Did you give receipts for said mortgages? And if so, please identify them. State when, or about what time, you gave them.

(Objected to.)

Ans. I did give receipts. They are already in the case, marked Exhibit 2, A, B, and C; three in all. I gave the one marked 2 A, July 28th, 1869, and the others on the 11th of August, 1869.

Int. 77. As collateral on whose account did you receive the mortgages and notes?

Ans. On account of Novelli & Co., England.

Int. 78. Do you know Randolph Burgess? And if yea, where is he? And state whether or not you ever saw him write, and are acquainted with his signature.

Ans. Yes, I know him. He is in my office in New York. I see him write daily, and know his signature well. He lives in the city of New York.

Int. 79. Please examine Exhibit 7, (already in the case,) now shown you, and state in whose handwriting is the name Randolph Burgess on said exhibit.

Ans. It is in his, Randolph Burgess's, handwriting.

Int. 80. Which of the deeds which you say miscarried, and which of those sent as duplicates, did you leave with said Patch, and on what day?

Ans. I can't say which they were. They were exactly alike. Two I sent to him in June, and the other two I gave to him the 31st of July, 1869.

Int. 81. Have you seen them since?

Ans. No, sir; I have not.

Int. 82. Did said Bacheller have any conversation with you on July 28, 1869, when he gave you the mortgage of July 27, 1869? If so, what?

Ans. Yes, he had. He told me that he was going into the country for a month with his wife, to recruit his health; on his return he purposed putting his shoulder to the wheel, selling his goods, and paying off the whole of his indebtedness; that he could do so, and have
85 some $15,000 or $20,000 left. We had a long conversation, but I think that is about the substance of all that was of any importance.

Int. 83. State whether or not said Bacheller's debt to Stansfield, Brown & Co. was paid; and if so, when and from whom do you derive your information?

Ans. Yes, sir; it is paid. The information I got from Mr. Bacheller; also from Mr. Winter, who represents them in this country.

Int. 84. State about what time said Bacheller informed you it was paid.

Ans. In May, 1869.

Int. 85. Please state the dates when you sent withdrawal orders to said Bacheller, and for how many cases, from time to time.

Ans. I couldn't do that from memory, but can from my memorandum: May 26, 1869, three cases; June 10, seven cases; June 12, four cases; June 14, five cases; June 21, four cases; June 23, three cases; June 25, three cases; June 26, four cases; June 30, four cases; July 7, two cases; in all, thirty-nine cases.

Int. 86. About how much were said thirty-nine cases worth, without the duties?

Ans. About four thousand pounds sterling. They were worth more than that, but that is about the figure.

Int. 87. State whether or not said Bacheller ever requested you to

send him or give him any withdrawal orders which you did not send him or give him.

Ans. No, sir; he did not.

Int. 88. Are you acquainted with the handwriting of said Bacheller, and with the handwriting of Josiah F. Kimball, and have you or not seen them write?

Ans. Yes, I am acquainted with the handwriting of both, and have seen them both write?

Int. 89. Who executed the transfer to you at the custom-house of the cases of goods which were transferred to you?

Ans. J. C. Bacheller generally. May 7, June 4, and September 4 were transferred by Bacheller. Those of August 12 were transferred by J. F. Kimball, as his attorney.

Adjourned to Monday, Sept. 26.

86 MONDAY, *Sept.* 26.

Resumed:

Int. 90. Do you know whether said Bacheller had any title to the Bacheller-street real estate which he conveyed to you; and if he did not, why not?

Ans. I understood from him that he had a clear title to it. I have learned since he went into bankruptcy that he had no title to it. I heard so from Mr. Sawyer, one of the assignees. His grantor, Sophronia S. Speed, was a married woman, and her husband didn't join in the deed. She is a sister of J. C. Bacheller.

(The counsel for the respondent here puts into the case a certified copy of a deed from Sophronia S. Speed to J. C. Bacheller, marked Exhibit 11, F. A.)

Int. 91. When did you first receive the notes marked Exhibits 7, 8, and 9, now shown you?

Ans. Exhibit 7 I received on the 28th day of July, 1869, and Exhibits 8 and 9 on the 31st of July, 1869.

Int. 92. Please refer to your answer to the 59th and 60th questions, and explain the same.

Ans. I was mistaken in those answers. I meant to say that the notes dated July 31st, 1869, were handed me on that day, July 31st, along with the mortgage. The note of the date of July 27th, 1869, was given to me on the 28th of July, along with the mortgage of the same date, the 27th. After receiving the two mortgages of July 31st, 1869, Mr. Patch said he was going down to Salem the next day—one required recording there—and if I would leave it with him he would have it recorded, to save me the trouble of going down; and also, if I would leave the one of July 27th, 1869, and the other one of July 31st, 1869, which required recording in Lynn, he would also have them recorded, and return me the three in two or three days. All three were left at the Tremont House, Boston, for me, I think, the 18th of September, 1869.

Int. 93. On whose behalf did you take said goods out of the custom-house? and whether you took them out before or after the failure of said Bacheller?

87 Ans. I took them out on behalf of Novelli & Co., of England, and after Mr. Bacheller's failure.

Int. 94. Whose money paid duties and warehouse charges on the said goods which you withdrew from the custom-house?

Ans. Novelli & Co.'s.

Int. 95. Please state what cases, which you sent withdrawal orders for, said Bacheller withdrew from the custom-house in September, 1869?

Ans. No. 359, on September 13th, 1869; No. 362, on September 20th; No. 391, on September 20th; Nos. 357 and 358, September 20th. The duties were paid on these on the days I have named, and I presume they were withdrawn on the same days.

Int. 96. What make of goods were those ordered by said Bacheller of Novelli & Co.?

Ans. They were Foster's makes, lastings and serges, an extra quality and width, above their regular standard make. They are an inch wider in the gray, and also heavier; finished heavier. The reason of that is they come out half an inch wider than their regular standard goods.

Int. 97. How did this make for Bacheller compare in price with Foster's standards?

Ans. They are charged to him two shillings per piece more than their regular standards, which is hardly an equivalent, because they were made one-twenty-seventh wider, the regular width of their standard goods in the gray being twenty-seven inches.

Int. 98. How did Foster's make of goods compare with other makers' goods?

Ans. They were the best goods made in the market, and generally sold at one shilling per piece higher than the next best maker, and from two to three shillings higher than the generality of makers. This refers to their regular standard goods. Bacheller's were made wider than their regular standards.

Int. 99. How did the quality of those Bacheller ordered compare with Foster's standards?

Ans. They were superior in width and quality.

Int. 100. Did said Bacheller at any time request goods not to
88 be shipped; and if so, when, or about what time, and what reason did he give therefor, if any?

Ans. He did. On the 7th of May, 1869, I sent a cable despatch, at his request, asking Novelli & Co. not to ship any more goods until further advised, as they were not likely to be wanted in this market before July or August, and storage or warehousing was much cheaper in England than in Boston. This I confirmed by letter by next post to Novelli & Co. That was the reason that Bacheller gave.

Int. 101. State whether or not he afterwards requested them to ship goods, and when, and whether they were shipped, and what part of them shipped.

Ans. He did. On the 21st of June he requested me to write Novelli & Co. to ship all goods in stock, from fourteen to eighteen threads; and on the 6th of July, 1869, he requested me to write them to ship all the balance of the goods. They were all shipped, according to his request.

Int. 102. Was there ever any change of the agreement, referred to by you as made on May 6th, 1869, viz, that if you would send him future invoices and bills of lading, he would attend to the entry at the custom-house, and transfer them to you at the time of entry?

Ans. No, sir. There never was any change made.

Int. 103. To what make of goods did Novelli & Co.'s quotations, sent to Bacheller, refer?

Ans. Generally to their standard makes—that is, Foster's.

Int. 104. State whether or not said Bacheller gave you any reason why he did not remit regularly to Novelli & Co.? If so, what?

Ans. He did. His general reason was that he was sure gold and exchange would be lower in a few days, and that was what he was waiting for.

Int. 105. Did he give any other reason?

Ans. Yes, he did, in one instance; that the examination at Cambridge was taking place, and that he couldn't get his notes, so that he couldn't get them discounted. He referred to commencement at Cambridge.

Int. 106. Was there anything in Bacheller's not remitting regularly which excited any suspicion or distrust in your mind?

89 (Objected to.)

Ans. Nothing. He had been behindhand from his commencement in business, or from the time his first payment was due. He was always in the habit of delaying payments, waiting for a decline in gold.

Int. 107. How was he in that respect when a partner with Breed?

Ans. Mr. Breed had charge of the financial matters, and told me Mr. Bacheller always wanted to delay remitting until gold or exchange was at a more favorable rate. He also told me that was the cause of their disagreement; that Mr. Bacheller insisted upon buying the gold for remittance.

Int. 108. When, or about what time, did said Breed make that statement to you?

Ans. I think it was in July, 1868.

Int. 109. About how often in the spring and summer of 1869 were you in the habit of visiting Boston?

Ans. Every three or four weeks.

Int. 110. Can you state down to what time said Bacheller had a place of business in Boston, and the size of his place of business here?

Ans. He gave up possession on or before the 10th of April, 1869. It was a small office, corner of Milk and Congress streets, partitioned off from a store. It was large enough to put in two small desks and four or five chairs. He had permission to call there and write his letters for a short time afterwards; how long I don't know. The party in possession told me he didn't think he had been there at all after April 20th, 1869.

Int. 111. Where was his principal business and stock?

Ans. In Lynn, on Exchange street.

Int. 112. Where were his principal customers located?

Ans. In Lynn. I believe he had some few out of Lynn; I understood very small. He told me so himself.

Int. 113. Did he give you any reason for discontinuing his small office here?

Ans. Yes; it was that, pretty near the whole of his trade being in Lynn, it answered his purpose better to have his store down there,

90 being more handy for his customers, and also the saving in cartage from the bonded warehouse, as he could forward the goods he had sold direct to his store in Lynn, and then deliver them in his own conveyance to his customers.

Int. 114. Where did you usually stop in the spring, summer, and fall of 1869, when you came to Boston?

Ans. That year I always stopped at the Tremont House.

Int. 115. (De bene.) Was it ever stated in your presence or hearing that your meetings with said Bacheller might or should be kept as far as possible from the rest of the shoe-finding trade, or anything to that effect?

Ans. No, sir.

Int. 116. Was there any secrecy at all in your meetings with said Bacheller in the spring, summer, or fall of 1869?

Ans. No, sir; not any.

Int. 117. After he discontinued his office here, as stated by you, did he have any place of business in Boston, where you could meet him?

Ans. No, sir; he had not.

Int. 118. Can you state what amount of merchandise Novelli & Co. delivered to said Bacheller after January 1, 1869?

Ans. I cannot from memory. By looking at Exhibit 10, A and B, I find the amount is nine thousand five hundred and seventy-nine pounds five shillings and tenpence sterling, including interest.

Int. 119. Did Novelli & Co. have any customers in Boston, other than said Bacheller, in the spring, summer, and fall of 1869?

Ans. Yes, sir.

Int. 120. About how often did you come to Boston to see them?

Ans. Every three or four weeks.

Int. 121. State whether or not you usually called upon them every time you were here?

Ans. Yes. It was my custom to call upon the whole of them in the shoe-finding business.

Int. 122. Was said Breed one of your customers?

91 Ans. Yes.

Int. 123. Did said Breed make any statement to you about said Bacheller's pecuniary condition in 1869; and if so, when and what did he say?

(Objected to.)

Ans. He did. In July, 1869, he told me that he thought Mr. Bacheller could pay all his indebtedness and have some fifteen or twenty thousand dollars surplus.

Int. 124. Do you know John B. Alley, of Lynn; and if so, how long have you known him?

(Objected to.)

Ans. Yes. I have known him partially since 1868. I know him in a business capacity.

Int. 125. Which Mr. John B. Alley do you refer to?

(Objected to.)

Ans. I refer to the one now or late in business in Pearl street, and who was formerly a member of Congress.

Int. 126. Did he at any time, and when, say anything to you in respect to said Bacheller; and if so, what?

Ans. Yes, he did. I think in August, 1869, he told me, in the course of conversation, that he thought Jerry was a strictly honest, honorable man, and would fulfil all his engagements; that he didn't know what he was worth, but he thought him pretty well off. By Jerry he meant Mr. Bacheller.

Adjourned to Tuesday, Sept. 27, 1870.

TUESDAY, *Sept.* 27.

Resumed:

Int. 127. How did said Breed and said Alley come to speak of said Bacheller?

Ans. It is the usual custom amongst all shoe-finders, when we call upon them, to ask questions and talk about their neighbors in the business.

92 Int. 128. Did you ask about your other customers in the same way from time to time?

Ans. Yes, I did. I am not aware that I made any difference.

Int. 129. You have spoken, in your answers, of property on Exchange Place, in Lynn; is that the correct name of the locality?

Ans. I believe Exchange street, and not place, is the correct name for it.

Int. 130. Please state whether or not any one of the firm of Johnson and Thompson or William A. Cochrane ever made any statement to you about a sale by said Johnson & Thompson to said Bacheller, or their conduct in respect thereto; if yea, who, and what, and when?

(Objected to.)

Ans. Yes. Mr. Harrington, one of the firm, told me that they had sold Bacheller some cases of lastings; that, after having put them on the truck for Lynn, they heard that I had got security for our indebtedness, and, having heard that, sent a messenger out and caused the truck to return, and the goods were unloaded again in their place. This was on the 5th of June, 1869, I think. Mr. Harrington also told me, about a month afterwards, that, had they known at the time, namely, on the 5th of June, what they heard a few days afterwards, namely, that they could sell his note at the price they could, they should have delivered the goods. Mr. Cochrane told me about this time that Jerry, meaning Mr. Bacheller, was well off, and could pay all he owed.

Int. 131. When were you informed by said Harrington that the sale was made?

(Objected to.)

Ans. On the 5th of June, 1869, the day they were put on the truck. That was the day he told me they were sold.

Int. 132. Did said Harrington give any other reason for not letting the goods go except that he had heard that you had got security?

(Objected to.)

Ans. No, sir; not any.

93 Int. 133. Did said Cochrane express any dissatisfaction to you that Johnson & Thompson did not let the goods go; if yea, what?

(Objected to.)

Ans. He did. He said it was a great mistake not sending the goods, as Mr. Bacheller was well able, and would pay his way.

Int. 134. About what time did said Cochrane have the conversation with you which you have stated?

(Objected to.)

Ans. Early in July, 1869.

Int. 135. State whether or not you heard of any other refusal to give credit to said Bacheller.

Ans. No, sir; never heard of any.

Int. 136. State whether, or not, there was anything said, at any time, in respect to not recording the conveyances which said Bacheller gave you; if yea, what, when, and by whom?

Ans. Yes, there was. On the 6th of May, 1869, Mr. Bacheller said he had rather they were not recorded, excepting I particularly desired it, as there were rumors in the street, circulated by his enemies, that he was speculating in the gold-room, and if recorded it might increase these rumors. That was the substance of what was said.

Int. 137. Was there any agreement in respect to recording them; and if so, what was it?

Ans. Yes, there was; that they might be recorded any time I wished. Mr. Patch added that if I was not going to Lynn, and wanted them recorded at any time, he would have it done for me, if I would send them to him.

Int. 138. When were those statements made, and who was present?

Ans. They were made on the 6th of May, 1869. Mr. Bacheller, Mr. Patch, and myself, I think, were the only persons there.

Int. 139. Was there anything said at that time in respect to the

necessity of recording them, or otherwise; and if so, what, and by whom?

Ans. Yes, there was. Mr. Patch remarked that it did not make any difference; they were equally valid, and could be recorded at any time, without detriment to Novelli & Co.

94 Int. 140. When and from whom, if at all, did you first learn of the importance of recording them?

(Objected to.)

Ans. I heard it first from a friend of mine, in Brooklyn, New York, Mr. Thompson, a notary. I don't know the exact time. It was some weeks after receiving them. We were speaking about conveyances generally, and I casually asked him if it were necessary to have those things recorded, and he said yes.

Int. 141. Was there at any time other or further conversation in respect to not recording them, either with said Patch or said Bacheller, beside what you have stated, or in respect to the effect of recording them, on Bacheller's credit?

(Objected to.)

Ans. I don't recollect any further conversation.

Int. 142. State whether or not said Cochrane ever stated to you, as a reason why Johnson & Thompson or he did not deliver the goods sold to Bacheller, that he doubted said Bacheller's responsibility.

(Objected to.)

Ans. He told me the reason why they didn't send was because some one told Mr. Harrington that I had got security; that he did not doubt Mr. Bacheller's responsibility at all himself, nor hadn't done so. It was early in July that he told me this.

Int. 143. Did said Cochrane ever state any reason for not delivering the goods other than what you have stated?

Ans. No, sir.

Int. 144. State whether or not said Bacheller ever stated to you anything, and if so, what, as to the rumors that he was speculating in the gold-room.

Ans. Yes, he did. He said they were circulated by competitors who wanted to injure him in his business; that he did not speculate in gold, but only bought what he required for his business purposes—for duties and remittances.

Int. 145. Was there ever any agreement or understanding that there should be any particular place of your meeting said Bacheller, or of his meeting you, or of keeping your meetings from the knowl-

95 edge of the shoe-finding trade; or was anything ever stated by you, or by said Bacheller in your hearing, upon that subject, either directly or indirectly?

Ans. No, sir. After Mr. Bacheller gave up his office in Boston, there was no place where I could be sure to find him; there was no agreement or understanding between him and myself any more than any other of my customers. Nothing was stated at all upon that subject by either of us, or by anybody else in my hearing.

Int. 146. State whether or not, on or before September 4th, 1869, you heard anything, or any rumor, against said Bacheller's credit, except what you have stated as to the non-delivery of goods sold by Johnson & Thompson, and the reference that you have mentioned as to said Bacheller's speculating in the gold-room.

(Objected to.)

Ans. No, sir, I had not.

Int. 147. State whether or not, on or before September 4th, 1869, you

had any reason to doubt the correctness of said Bacheller's representations to you as to his ability and property, and as to what he owed.

(Objected to.)

Ans. No, sir, I had not.

Int. 148. Did said Bacheller ever admit or acknowledge to you that he speculated in gold? What did he say on that subject?

(Objected to.)

Ans. No, sir, he never did. He said he only bought gold for his legitimate business purposes, and that he did not speculate in gold.

Int. 149. State whether or not you placed any, and if so, what, reliance or confidence in said Bacheller's representations and statements to you.

(Objected to.)

Ans. I did; the most implicit confidence and reliance.

Int. 150. Did you at any time on or before September 4th, 1869, have any reason or cause to doubt the accuracy or truth of his representations or statements?

(Objected to.)

Ans. No, sir, none whatever.

Int. 151. State whether or not, on or before September 4th,
96 1869, you had any reason to suppose or believe that he was not able to meet all his engagements and liabilities as they matured?

(Objected to.)

Ans. I had not; being fully impressed that he only waited until exchange or gold became more favorable for so doing. This he frequently told me himself was his only cause for not doing so.

Int. 152. Did you, on or before September 4th, 1869, have any reason or cause to suppose he had not property sufficient to meet all his liabilities as they matured, if he would use it for that purpose?

(Objected to.)

Ans. No, sir, I did not.

Int. 153. State whether or not, either on or before September 4th, 1869, you had any cause to believe said Bacheller was insolvent, or in contemplation of insolvency, or that he was acting in contemplation of insolvency.

(Objected to.)

Ans. No, sir, I had not.

Int. 154. Do you know Edward Greey?

Ans. Yes, I do.

Int. 155. State whether or not you were present at any time with him at the office of Mr. Dean, who is now of counsel for the assignees in this case; and if so, when it was, and whether at that time you exhibited any papers, or made any statements as to goods in bond; and if so, what.

Ans. I was present with him at Mr. Dean's office on the 24th of September, 1869, when I showed Mr. Dean the three deeds or conveyances previously named in this case. I also told him that there were some cases of goods in bond in my name, which had been transferred to me at the time of entry.

Int. 156. State whether or not you ever, after taking the goods out of the custom-house, told said Greey they were still in the custom-house.

Ans. No, sir, I did not.

Int. 157. Did said Greey ever, at any time, say anything to you as to not prosecuting for the goods? If so, what, and about how long ago?

Ans. No, sir; I don't recollect that he did.

97 Int. 158. Did you ever have any talk with him on that subject, or offer to give up any of the goods, or any of the security on the real or personal estate?

Ans. I had some talk with him, I think, about October, 1869, in which he advised me to give up the deeds, so that we could prove our debt, and by that means have a voice in the choice of assignees.

Int. 159. State whether or not that was all the conversation you had with him on that subject.

Ans. I don't recollect any other or any further conversation.

Int. 160. Did you at that time, or any other time, offer to said Greey to give up anything which you had?

Ans. No, sir.

Int. 161. Did you at any time state, in substance, to said Greey that you were quite taken by surprise at Bacheller's offering to give a statement of his affairs? What, if anything, did you say on that subject?

Ans. I did; and said that I asked Bacheller what he meant by giving a statement; if he meant that he couldn't pay his debts, as until that time I had always thought he could do so and have a surplus. That is about the substance of what I told him.

Int. 162. Was this conversation with said Greey before or after all the goods which were transferred to you had been so transferred?

Ans. It was after.

Int. 163. State as nearly as you can on what day this conversation with said Greey occurred.

Ans. On the 24th of September, 1869.

Int. 164. Did you ever tell said Greey that before the failure of said Bacheller you ever had been afraid of his ability to pay, or had any doubts on that subject?

Ans. No, sir.

Int. 165. Had said Bacheller failed at the time he transferred to you the goods on September 4, 1869?

Ans. No, sir.

Int. 166. Did you ever tell said Greey that you had for some
98 time been very much afraid of Bacheller's ability to pay? What did you tell him?

Ans. No, I did not. I told him that eventually Bacheller might lose all his money, or a great portion of it; but I thought he would pay everybody, and at that time was quite able to do so.

Int. 167. On what day did you make said statement to said Greey?

Ans. I can't recollect the exact date; I think it was in August, 1869.

Int. 168. Did said Bacheller ever tell you anything, if so, what, in regard to his sale of stock or house?

Ans. He did; he told me that he had sold his stock to Ira J. Patch, for $10,804 and some cents, and his house for $14,000. It was on the 18th of September, 1869, he told me he had sold his stock; and the 24th of September he told me he had sold his house.

Int. 169. Please examine the letters now shown to you, dated October 30th, 1868, November 20th, November 3d, November 4th, November 6th, November 24th, all in 1868; and January 5th, 8th, and 22d; February 9th, 10th, 11th, 12th; do. 12th, 16th, 18th, 19th; March 5th, do. 5th, 23d, 26th, 27th, and 30th; April 9th, 20th, and 23d; May 12th; June 9th, 10th, 15th, 17th, 19th, 22d, 23d, 25th, and 28th; July 2d, 6th, 9th, 13th, 20th, 23d, and 29th; September 13th and 20th, all in 1869, now put into this case, and marked Exhibits 12 to 56, inclusive, and state if you are acquainted with the signatures thereto, and who received said letters, and from whom.

Ans. Yes, I know the signatures. They were received by me in New York, for Novelli & Co., from J. C. Bacheller.

Int. 170. Who was G. G. Drew, J. F. Kimball, and Ira J. Patch, and

whether or not you are acquainted with their handwriting, and what do you know as to its genuineness as to those letters purporting to have been signed by them respectively?

Ans. They were in the employment of J. C. Bacheller; I am acquainted with their handwriting, and the signatures on these letters are in their handwritings respectively.

99 Int. 171. Please examine the letters now produced, dated March 12th, 23d, 24th, do. 24th; April 24th; June 9th, 15th, 19th, 20th, 23d, do. 23d; July 14th, 21st, do. 21st, 24th; August 11th; September 1st, 8th, and 29th; October 9th, 23d, 30th; November 3d; December 1st and 16th, all in 1868. January 2d, 5th, 8th, 19th, and 22d; February 5th, 9th, 11th, 12th, 16th, and 19th; March 5th, 12th, 23d, 26th, and 30th; two of April 9th; April 20th and 27th; May 7th, 25th, and 28th; June 11th, 15th, 22d, 25th, and 28th; July 2d, 6th, 9th, 13th, 20th, and 23d, all in the year 1869, put into this case, marked Exhibits 57 to 117, F. A. inclusive, and state if you are acquainted with the handwriting of the signatures to said letters, and from whom and to whom they came.

Ans. Yes, I know the handwriting. Three of them are from J. C. Bacheller & Co., one of them in Mr. Breed's handwriting, and two in C. M. Alley's. C. M. Alley was a clerk with J. C. Bacheller & Co. The others are from J. C. Bacheller, signed by Ira J. Patch, G. G. Drew, and J. F. Kimball, respectively, acting for J. C. Bacheller. Some of them came to Mr. J. S. Chappell and some to Novelli & Co.—all for Novelli & Co.

Adjourned to Wednesday, September 28th, 1870.

WEDNESDAY, *September* 28.

Resumed:

Int. 172. Please examine the letter of May 20th, 1869, from you to said Bacheller, now in this case, and state what you therein refer to by the words "bills of sale."

Ans. I mean the conveyances or deeds.

Int. 173. Please examine the letter already in this case, dated June 26th, 1869, from you to said Bacheller, and state whether you can now make certain when you got the deeds which miscarried.

Ans. Yes, sir; I received them on the 26th of June, 1869, in New York.

100 Int. 174. Please examine the letter already in this case from you to said Bacheller, of June 30th, 1860, and state what the docments of May 17th and the envelope mentioned in said letter refer to.

Ans. The documents there referred to are the deeds or conveyances which had miscarried. The envelope which contained the documents which had miscarried is the one there referred to.

Int. 175. Please refer to the letter of April 23d, 1869, from said Bacheller to you, and state what is meant by the words therein, "I thought after the conversation with you last week you understood my position."

Ans. Our conversation was that he had funds in hand, but gold was so high he didn't want to remit at present. By understanding his position, he meant that he had funds in hand to buy gold as soon as a favorable opportunity presented itself in price.

Int. 176. Where are the documents referred to in said Bacheller's letter to you of May 12th, 1869, already in the case?

Ans. Those are the deeds or conveyances before referred to by me.

Int. 177. Please examine the letters from said Bacheller to you of

June 19th, 1869, and June 23d, 1869, already within the case, and state what the programme therein mentioned refers to?

Ans. The programme referred to is the substance of the letter of June 10th, 1869, from said Bacheller to me; that he was selling the goods so that he could make a return from them, the most of them in thirty days; and before sixty days he felt confident he could pay the whole of our account.

Int. 178. Please examine the letter from said Bacheller to you of July 29, 1869, already in the case, and state what the word "documents" therein mentioned refers to.

Ans. It refers to the deeds or conveyances in this case.

Int. 179. What was the change in the documents therein referred to?

Ans. In the place of two of those Mr. Patch gave me two mortgages.

Int. 180. Was there any other change?

Ans. None, whatever.

101 Int. 181. Please examine your letter to said Bacheller of September 23d, 1869, already in the case, and explain the request therein for twenty or twenty-four withdrawal papers; and state whether or not there was any necessity for them.

Ans. When in Lynn, a few days previous to September 23, 1869, Mr. Patch suggested that Mr. Bacheller should sign twenty or twenty-four of these papers and give them to me; that is the reason of the request, but there was really no necessity for them, as I could withdraw the goods from the custom-house under my own signature alone.

Int. 182. State upon whose signature you did in fact withdraw the goods from the custom-house.

Ans. Upon my own signature.

Int. 183. Please examine your letter to said Bacheller of September 27th, 1869, in the case, and state whether or not at that date cases 357, 358, 362, and 391 were in bond, or had been withdrawn; and, if withdrawn, when and by whom.

Ans. They were not in bond on that date. Nos. 357, 358, 362, and 391 were withdrawn on September 20th, 1869, by J. C. Bacheller.

Int. 184. When did you first hear or learn or have any reason to believe that said Bacheller was insolvent?

Ans. I don't recollect the exact date; it was after the middle of September, 1869.

Int. 185. Please explain your answer to the 58th interrogatory, and state what the date, October, 1869, therein mentioned, referred to—Bacheller's failure or his going into bankruptcy?

Ans. I meant his going into bankruptcy.

Int. 186. On whose account did you receive the mortgages and notes and previous conveyances from said Bacheller, which you have referred to?

Ans. On account of Novelli & Co., of England, as collateral security.

Int. 187. Can you make precise and exact the date on which you withdrew from the custom-house the goods which were withdrawn by you?

102 Ans. I can by reference to the custom-house papers in this case. It was October 14th, 1869.

Adjourned.

FRIDAY, *Oct.* 7, 1870.

Resumed.

Cross-examination:

Cross-int. 1. Who is J. S. Chappel, and what is his connection with Novelli & Co.?

Ans. J. S. Chappel is a clerk or salesman with Novelli & Co., and has the management of the small-wares department in Manchester, England.

Cross-int. 2 What is his business here in this country?

Ans. To take orders for Novelli & Co.

Cross-int. 3. Has he no authority or commission with regard to the affairs of Novelli & Co. with J. C. Bacheller's estate?

Ans. None that I am aware of.

Cross-int. 4. Did Mr. Bacheller ever collect the fifteen thousand dollars he had out on mortgage; and, if yes, what did he do with it?

Ans. I dont know whether he collected it or not.

Cross-int. 5. Did he ever tell you whether he had?

Ans. No, sir.

Cross-int. 6. Were the debts due Novelli & Co., Turner & Stansfield, Brown & Co., payable in gold?

Ans. They were payable in sterling exchange on London or Liverpool.

Cross-int. 7. What was the price of sterling exchange May 6th, 1869?

Ans. I don't recollect.

Cross-int. 8. Did you ever make any inquiries regarding the value of the real estate conveyed or mortgaged to you by Bacheller?

Ans. Yes, sir.

Cross-int. 9. Before its conveyance on mortgage?

Ans. No, sir—after.

Cross-int. 10. How long after?

103 Ans. I don't exactly know the time; it was after Mr. Bacheller's failure, I think, in November, 1869.

Cross-int. 11. Did you have any personal knowledge of the dealings between Novelli & Co. and Batcheller, prior to April 2d, 1868?

Ans. No, sir.

Cross-int. 12. Why have you undertaken to testify regarding their prior dealings?

Ans. I testify from what I have heard, and not from my own personal knowledge prior to that time.

Cross-int. 13. Heard from whom?

Ans. Heard from Mr. Chappel, Mr. Skelhorn, and Mr. Breed.

Cross-int. 14. What had Mr. Chappel to do with those prior dealings?

Ans. Mr. Chappel was here, I think, in 1865, and the greater portion of 1867, and up to May, 1868, taking orders for our goods generally; so he knew quite well what was going on.

Cross-int. 15. Were the bills of lading sent by Novelli & Co. to Bacheller & Co., and to Bacheller, always to order, so far as you know?

Ans. No; they were not.

Cross-int. 16. Upon what occasions were you present when goods were transferred by Bacheller to you?

Ans. May 7th, 1869, and, I think, August, 1869.

Cross-int. 17. How confident are you of August, 1869?

Ans. I am not quite clear whether I was there or not. I was there on two occasions.

Cross-int. 18. Before the goods were withdrawn from the custom-house by you, October 14, 1869, had you asked Bacheller to sign withdrawal orders to enable you to get them?

Ans. No, sir. Mr. Patch proposed that he should do so, to which Mr. Bacheller assented, and said he would forward them to me at my hotel. He not having done so, I wrote him a note reminding him of it.

Cross-int. 19. Why was that course proposed?

104 Ans. It was proposed by Mr. Patch, who remarked that it might probably make the withdrawal more simple.

Cross-int. 20. How so?

Ans. I don't know how it could do it, myself.

Cross-int. 21. Does not the course of procedure of the custom-house require, generally, such signature; and are not the blanks adapted to that course of procedure?

Ans. It does require it, if Mr. Bacheller takes them out; but the party to whom goods are transferred can take them out on his own signature; but the papers are printed with a form for both signatures, in case the party who transferred the goods may want some of them himself.

Cross-int. 22. Did you withdraw any goods for which Bacheller had withdrawal orders, which he declined to return to you?

Ans. No, sir.

Cross-int. 23. When did you first learn of bankruptcy proceedings against Bacheller?

Ans. In October, 1869.

Cross-int. 24. How long before he went into bankruptcy?

Ans. I don't recollect; I think about a fortnight. I heard of his failure in September.

Cross-int. When in September?

Ans. The 16th or 17th of September, I first heard of it.

Cross-int. 26. When did you learn that Bacheller had concluded to go into bankruptcy, rather than be driven in by involuntary proceedings?

Ans. I didn't actually know until he really had gone into bankruptcy.

Cross-int. 27. Are the cases withdrawn by you mentioned in the account-current put in the case by the plaintiff, and in whose handwriting is said account-current?

Ans. They are. This is not really an account-current. It is an interest account, and is marked so at the top in red ink, showing what goods Bacheller owes for; also what goods Novelli & Co. hold, bought for him. I don't know in whose handwriting it is. It is one

105 of the clerks in our Manchester house, whose duty it is to make out these statements.

Cross-int. 28. On what time were goods sold to Bacheller?

Ans. Upon our regular terms; bill of exchange to be received in Manchester, England, within sixty days from date of the invoice.

Cross-int. 29. Were the mortgages received by you received in payment to the extent of the consideration mentioned in them, or were they to be held as general security?

Ans. They were to be held as general security.

Cross-int. 30. You have spoken of having duplicates of deeds; did you compare said deeds word for word?

Ans. One of them I read over carefully, and the duplicate at the same time, and the other I only casually read.

Cross-int. 31. Were those you read over carefully alike in all respects?

Ans. I didn't find any difference in them.

Cross-int. 32. Do you testify you found them alike?

Ans. Yes, sir, to the best of my knowledge.

Cross-int. 33. You have testified that in July, 1869, Mr. Bacheller told you, on his return from the country, he purposed putting his shoulder o the wheel, selling his goods, and paying off the whole or his indebt-

edness; that he could do so, and have some fifteen thousand or twenty thousand dollars left. Did he tell you what had become of the sixty thousand dollars he had lost since the time he told you he was worth seventy-five or eighty thousand dollars above his indebtedness?

Ans. No, sir.

Cross-int. 34. Did you ask him?

Ans. No, sir.

Cross-int. 35. When was the debt of Stansfield, Brown & Co. paid?

Ans. I think in June, 1869. I am not sure, though. I don't know personally.

Cross-int. 36. When did you first learn of it, from whom and where?

106 Ans. I think in June, 1869; from a communication from Mr. Bachellor, which I received in New York.

Cross-int. 37. Was your first information by written communication?

Ans. Yes, sir.

Cross-int. 38. Where is it? Please produce it.

Ans. I don't know where it is. If I examined his letters I could find it probably. I will produce it if I can find it.

Cross-int. 39. Did you not learn in May that the debt of Stansfield, Brown & Co. was paid?

Ans. I think not. I think it was after May.

Cross-int. 40. Why do you think not?

Ans. My impression is that it was in June.

Cross-int. 41. Have you any foundation for that impression, and, if yes, what?

Ans. My impression is that it was after my visit to Boston, on the 7th of May.

Cross-int. 42. How early did you have any conversation with Mr. Bacheller about the payment of Stansfield, Brown & Co.?

Ans. I think in May, 1869.

Cross-int. 43. What was that conversation?

Ans. Mr. Bacheller told me that Mr. Winter was pressing him for their account, and he thought he had better pay it, and it would be done with.

Cross int. 44. What did you say to that?

Ans. I think I remarked he knew best, and must act as he thought best; or something to that effect it was.

Cross-int. 45. What was the amount of their debt at that time?

Ans. Bacheller told me it was one thousand pounds sterling.

Cross-int. 46. What would he have to pay in currency in that time for exchange on London or Liverpool?

Ans. I can't say. I don't know the rate of gold or exchange at that date.

Cross-int. What time in May was that conversation?

Ans. I am not quite sure. I think either the 7th or 8th.

Cross-int. 48. Where you not then pressing him for payment?

107 Ans. Yes, sir.

Cross-int. 49. State all that Bacheller said regarding the pressure for payment by Stansfield, Brown & Co.

Ans. To the best of my recollection he said that Mr. Winter had called upon him and used him very roughly, and threatened him with proceedings unless he gave him exchange for the amount of their account; and that he thought he had better do so. That was the substance of the conversation on that subject.

Cross-int. 50. What was said about the way in which the money should be raised?

Ans. Nothing.

Cross-int. 51. Did you get any money from Mr. Bacheller at that time?

Ans. I got some a few days before Mr. Winter saw him; probably one or two days.

Cross-int. 52. How much?

Ans. About two hundred pounds sterling.

Cross-int. 53. (De bene.) Did Mr. Breed tell you why he dissolved partnership with Mr. Bacheller?

Ans. Yes, sir.

Cross-int. 54. What did he say?

Ans. He told me the principal reason was their disagreement about remittances; he, Mr. Breed, had the management of the financial department; and Mr. Bacheller would frequently request him to delay remittances when due until gold and exchange could be bought at a more favorable rate. Eventually Mr. Bacheller insisted upon buying the gold himself, and said he wouldn't allow Mr. Breed to do so any more; that, Mr. Breed said, was the principal cause of their dissolution.

Cross-int. 55. (De bene.) Did Mr. Breed say nothing to you about Bacheller reading financial articles in the papers and then going to Boston to purcase gold, expressing the belief that he, Bacheller, understood the whole situation, and should make money by it?

Ans. No, sir.

108 Cross-int. 56. (De bene.) Did he say nothing to you about Mr. Bacheller's habits in that regard?

Ans. Yes, sir.

Cross-int. 57. (De bene.) What did he say?

Ans. He said that Mr. Bacheller got the impression that gold must be cheaper, and that every week they delayed remitting they might save something.

Cross-int. 58. (De bene.) From whom did you learn that Mr. Bacheller was in the habit of speculating in gold?

(Objected to.)

Ans. I don't know that I learned it from any one; I was asked by one or two if he was speculating in gold; but Mr. Bacheller assured me himself that he was not speculating; that he only bought what he required for his usual business purposes.

Cross-int. 59. (De bene.) Were you not asked by Mr. Breed, or did you not have some conversation with Breed, on the subject of Mr. Bacheller's speculating in gold?

Ans. I had some conversation with Mr. Breed; he was one of the parties who asked me the question. He said he did not know personally that he was speculating in gold; he said he had heard so, and I think he added that Mr. Bacheller told him he was not.

Cross-int. 60. (De bene.) Did he not at that time tell you that, when he was in company with Mr. Bacheller, Bacheller had an idea that he could make money by operating in gold?

Ans. No, sir; if by operating you mean speculating, he did not.

Cross-int. 61. (De bene.) Have you told all that Mr. Breed said to you about Bacheller's dealing in gold?

Ans. I have told all I recollect of any importance; he remarked that if he, Bacheller, buys gold as his accounts became due, irrespective of price, he thought it would be better.

Cross-int. 62. (De bene.) Did Mr. Breed never say anything to you about Mr. Bacheller's reading financial articles?

Ans. No, sir.

Cross-int. 63. (De bene.) Who else inquired of you whether Bacheller was dealing in gold?

109 Ans. Mr. Boyce.

Cross-int. 64. Who else than Bacheller occupied the same place of business with Bacheller in Boston?

Ans. I really don't know the names; he first went to a small office at 17 Pearl street; there was no one else in the office; he then removed to the corner of Congress and Milk streets, where he had a small office to himself for a short time; the people occupying the balance of the office were in the leather trade.

Cross-int. 65. What became of the goods withdrawn from the custom-house October 14, 1869?

Ans. They were removed to Johnson & Thompson's, in Congress street.

Cross-int. 66. Were they stored there?

Ans. Yes, sir.

Cross-int. 67. Why were they removed?

(Objected to as immaterial.)

Ans. Because we thought it a favorable time for their removal and disposal.

Cross-int. 68. In what respect was it a favorable time?

Ans. The fall trade was just about opening, and those goods were wanted.

Cross-int. 69. Couldn't you have sold them in bond?

Ans. We did not try to do so.

Cross-int. 70. Wasn't your business selling entirely on orders?

Ans. We don't sell anything here; we simply take orders for goods in England. Any goods which we may have thrown up, which we occasionally have, we put them into the hands of some firm here to dispose of on our account.

Cross-int. 71. What was the amount of duties you paid to take these goods out of bond?

Ans. I don't recollect exactly; by referring to my pocket-book I can tell; it is a memorandum made at the time. Sixteen thousand two hundred and fifty-three dollars and seventy-five cents, in gold.

Cross-int. 72. On what other occasions before October, 1869, did you take goods out of bond in Boston?

Ans. I personally haven't taken any out.

110 Cross-int. 73. Did you ever personally take any out, except on this occasion, the 14th of October, 1869?

Ans. No, sir; not for Novelli & Co.

Cross-int. 74. When first put into Johnson & Thompson's store, did they have directions to sell them?

Ans. Yes, sir.

Cross-int. 75. Did you ever, before or since, place goods in their hands, or the hands of any other persons in Boston, for sale?

Ans. I have not personally, but I understand Novelli & Co. have done so occasionally previous to my engagement with them.

(Latter part of answer objected to as not responsive.)

Cross-int. 76. Were you present during the examination of Mr. Cochrane, a witness in this case?

Ans. Yes, sir; I was.

Cross-int. 77. How did these goods compare in quality, not width, with Foster's standards?

Ans. They were heavier than their regular standards, and consequently better.

Cross-int. 78. How much heavier?

Ans. I really can't tell the exact difference; the shrinking of half an inch in the width, which makes them that heavier in proportion; there is that difference; the standards are made twenty-seven inches wide, and stretched while finishing to keep them out to twenty-seven inches; these A goods are made twenty-eight inches, and allowed to shrink as much as they naturally will in finishing, which will average half an inch.

Cross-int. 79. What was the difference in the market value or prices of said standards and A goods?

Ans. The A goods would bring four and five cents more a yard than the regular standards; the lower numbers four, and the finer and better five, which is equivalent to $1.20 and $1.50 per piece.

Cross-int. 80. Did they rise and fall in the market alike, or substantially so?

Ans. Yes, they generally did; the standards ruling the price.

Cross-int. 81. Which deed did Mr. Bacheller's wife sign?

Ans. I think it was of the real estate.

111 Cross-int. 82. How came Mr. Bacheller to give you the mortgage of July 27, 1869?

Ans. I don't know at all.

Cross-int. 83. Was it voluntary on his part?

Ans. Yes, sir; quite so.

Cross-int. 84. Had there been nothing said about it before?

Ans. Nothing whatever. I had no idea of it until he gave it to me.

Cross-int. 85. What reason did he give for bringing it to you?

Ans. That he was going into the country, and that he wished to show both myself and Novelli & Co. that he was quite willing and able to pay his indebtedness; that during the time he was away his remittances would not go forward as they previously had done.

Cross-int. 86. What followed?

Ans. He then told me that on his return he was going to sell his goods, and pay off his indebtedness, which he expected to do without further infringment on his real estate, and have some $15,000 or $20,000 left.

Cross-int. 87. What followed?

Ans. I don't remember anything.

Cross-int. 88. When did Mr. Bacheller leave New York after this transaction?

Ans. He told me he was leaving that evening, or next day. I didn't see him again.

Cross-int. 89. How soon after that did you come to Boston?

Ans. I think I came two or three days after that, to the best of my recollection?

Cross-int. 90. What was the day of the week of said conversation of July 27th?

Ans. I think it was the 28th I had that conversation with him. To the best of my recollection it was Friday.

Cross-int. 91. Was nothing said about any other deeds that day?

Ans. I don't recollect that anything was said at all. I think not.

Cross-int. 92. Anything said about any other mortgages?

Ans. No, sir.

112 Cross-int. 93. How soon after that was anything said about any other mortgages?

Ans. It was on the 31st of July. I took the deeds to Mr. Patch to have them recorded. He said they would require some little alteration, and if I would leave them with him he would have it done. I left them with him until Mr. Bacheller and I went and had tea. On our return to the store, about eight or nine o'clock, Mr. Patch handed me the two mortgages of July 31st, remarking that they were better than the deeds, and that if I would leave them with him he would have them recorded and forwarded to me. I left them with him for that purpose.

Cross-int. 94. Was anything said about these mortgages or about recording the deeds when Bacheller saw you in New York on the 28th of July, which caused you to bring them on and have them here on the 31st?

Ans. No, sir; I don't think they were mentioned at all on that day.

Cross-int. 95. Had you any previous notice that Mr. Bacheller was coming to New York to be there on the 28th of July?

Ans. No, sir; he had written to me several times that he was coming on directly he could find a day or two to spare.

Direct examination resumed:

Int. 188. Who was Mr. Skelhorn, to whom you have referred?

Ans. Mr. Skelhorn is with Novelli & Co., in Bradford, England, and has the management of their business there.

EDWARD TURPIN.

NOTE.—The letter referred to in the 37th and 38th cross-interrogatories, dated May 21st, 1869, was produced by Mr. Turpin and put into this case Oct. 20th, 1870, and marked Exhibit 42½.

FISHER AMES,
Commissioner.

113 *Deposition of Amos P. Tapley.*

FEBRUARY 7, 1871.

Int. 1. State your name, age, residence, and occupation.

Ans. Amos P. Tapley; fifty-three; shoe-dealer; Lynn.

Int. 2. How long have you resided in Lynn?

Ans. All my life except ten years, (from 1832 to 1842,) when I resided in Boston.

Int. 3. Where do you do business, and how long have you done business there?

Ans. The last thirty-two years, in Boston.

Int. 4. Do you know Jeremiah C. Bacheller, of Lynn; and how long have you known him?

Ans. Yes; since 1854.

Int. 5. Have you ever been connected with any bank in Lynn? If yea, with what bank, in what capacity, and how long?

Ans. Yes; City Bank of Lynn, since its organization in 1854, as director, to 1858; its president since, to this time.

Int. 6. State whether or not that bank discounted any paper for said Bacheller, bearing his name, in June, July, or August, 1869. If yea, when and how much?

(Objected to.)

Ans. Yes; in June, about twenty thousand dollars; in July, about twelve thousand; in August, about fifteen hundred dollars.

Int. 7. How was said Bacheller a party to said paper?

Ans. As endorser.

Int. 8. What was said Bacheller's credit at the time, covered by said discount?

(Objected to.)

Ans. In good credit, as a bank customer. We discounted his paper all through. Do not remember ever rejecting any note. We took such business-paper as he offered.

114 Int. 9. Was a statement made at any time as to any investigation of his affairs; and, if yea, about what time was it made, and by whom, and what was the statement?

(Objected to.)

Ans. Statement made by one of the directors that he had looked over Mr. Bacheller's affairs, and either found him worth, or thought him worth, or he represented himself to be worth, shouldn't like to say the precise sum, but think it was forty thousand dollars. It was thirty or forty thousand dollars. He found him to be worth, or thought him to be worth, that sum. He gave us this as the result of his own investigations.

Int. 10. Do you recollect by whom or when this statement was made to the bank?

Ans. By Mr. L. B. Frazier. He didn't make the investigation in behalf of the bank. It came about in this way—I can't be exact: About the month of June, 1869, he, Bacheller, was wanting a large amount of money; think it was June; can't say positively.

Int. 11. In discounting for said Bacheller the paper which you referred to, upon whose names did the bank rely?

(Objected to.)

Ans. Relied upon Bacheller as well as the promis'ors of the note; did not have any security except the names.

Cross-interrogatories put to the witness de bene esse by J. A. Sawyer, one of the plaintiffs:

Cross-int. 1. Were not the promissors of the notes you refer to parties doing business in Lynn, and known to your directors as responsible men?

Ans. Most of them were doing business in Lynn, but not all. It was Mr. Bacheller's business-paper; a good deal of it first class, and some of it not. Some of the parties lived out of Lynn, and were not so well known to the directors.

Cross-int. 2. Was not every one of said parties known to the directors, or some one of them, and believed by them to be entirely responsible for the amount of the notes?

115 Ans. I can't say what every director knew. I can only say for myself that I did not at all times know every note. If he brought us twenty notes, I do not recollect refusing one. I think that if any one was weak, we relied upon Mr. Bacheller to make it good. Of course we relied some on the endorsements.

Cross-int. 3. Do not the rules of your bank require two names, each of which is known to be good, to authorize the discount of any note?

Ans. Yes. We require paper with two names, each of which we believe to be good. I couldn't exactly say yes to that "know."

AMOS P. TAPLEY.

Deposition of Cha's F. Harrington.

FEBRUARY 7, 1871.

Int. 1. State your name, age, residence, and occupation.

Ans. Charles F. Harrington; thirty-eight; Jamaica Plain; leather-dealer, doing business in Boston.

Int. 2. Were you, in 1869, connected with any, and if so what, firm, and where did they do business?

Ans. Connected with Johnson & Thompson, with an interest in the business, doing business at 178 Congress street, Boston.

Int. 3. About how long prior to 1869 had you been connected with that firm?

Ans. Commenced with them January 1, 1862.

Int. 4. Do you know Jeremiah C. Bacheller, of Lynn, and how long, or about how long, have you known him?

Ans. I have known him since 1860; had no business with him prior to January 7, 1869.

Int. 5. Please state whether or not, prior to June 5, 1869, Johnson & Thompson sold him any merchandise; and if yea, when, what amounts, and on what terms.

(Objected to.)

116 Ans. Yes. Jan. 7, four months' note, $1,622.40; Jan. 11, four months' note, $2,906.45; Jan. 14, four months' note, $3,301.41; Feb. 17, four months' note, $1,614.92.

Int. 6. State whether or not all these notes were paid.

(Objected to.)

Ans. I believe they were.

Int. 7. State whether or not Johnson & Thompson, after the sales that you have mentioned, made any other sales to said Bacheller; and if yea, when, on what day, and on what terms, and to what amount, and whether these last goods were delivered.

(Objected to.)

Ans. We (Johnson & Thompson) sold Bacheller, June 5th, 1869, for four months' note, $4,872.91. These goods Bacheller never received.

Int. 8. Who stopped them?

(Objected to.)

Ans. I caused parties to stop them.

Int. 9. Why?

(Objected to.)

Ans. Mr. Thompson told me he heard at the bank that Mr. Bacheller had mortgaged some property to Novelli & Co.

Int. 10. Was there any other reason for stopping the goods?

(Objected to.)

Ans. No other.

Int. 11. Did you, after that, try to sell said Bacheller any other goods; and if so, what goods, and why?

(Objected to.)

Ans. About two or three weeks after a party to whom I had sold notes of Bacheller's before came in and said he could place some more at one per cent. a month, that being the rate at which I had sold other notes of his, Bacheller's. Then I tried to sell him, Bacheller, a part or the whole of this same purchase, June 5.

Int. 12. Did you or not succeed in selling any of these goods to him? Who declined?

(Objected to.)

Ans. He, Bacheller, declined buying.

117 Int. 13. State whether or not said Bacheller, after that, ever applied to Johnson & Thompson to purchase any goods of them.

(Objected to.)

Ans. He did not.

Int. 14. How did the rate at which you could have sold his note compare with the market rates for money at the time?

(Objected to.)

Ans. We considered it a very fair rate.

Int. 15. Would Johnson & Thompson have had to endorse the note to sell it at that rate?

(Objected to.)

Ans. The offer was without recourse.

Int. 16. State whether or not, when you stopped the goods, you had heard anything against the credit of said Bacheller.

(Objected to.)

Ans. Had not heard anything.

Int. 17. State whether or not, after you stopped the goods, you said anything to Edward Turpin upon the subject of this offer; and if yea, what.

(Objected to.)

Ans. I mentioned the instance of having a chance to sell the paper if I could have got it.

Cross-interrogatories put to the witness (de bene esse) by J. A. Sawyer, one of the plaintiffs:

Cross-int. 1. How do you fix the date of the stoppage of the goods at June 5, 1869?

Ans. By our books.

Cross-int. 2. Did you make any entry of that fact upon your books, yourself?

Ans. No, sir; nor any one else. I know the date as I ordered the goods stopped immediately after they left the store, which was within an hour after the order was taken by our salesman.

Cross-int. 3. Did you make any entry on your books yourself relating to the ordering or purchase of the goods?

118 Ans. No, sir; but did not have entire charge at that time of that branch of our business as to credits, advances, purchases, etc.

Cross-int. 4. Have you stated all the means you have whereby you can fix the date of the purchase or the stoppage of these goods?

Ans. [No] other than having sanctioned the sale and made the prices.

Cross-int. 5. What is the date of this transaction given by your books?

Ans. June 5.

Cross-int. 6. Who made the entry of that date?

Ans. E. B. Harrington.

Cross-int. 7. Upon what book is that entry made?

Ans. Called the day-book; C. L. D., curried-leather department.

Cross-int. 8. Who was the party who came to you and offered to place Bacheller's paper?

Ans. W. F. Lawrence, note-broker.

Cross-int. 9. What do you mean by placing a person's paper?

Ans. A phrase used by the brokers, meaning as having a customer for it.

Cross-int. 10. If you had had the note for the broker to place, would Johnson & Thompson have endorsed it in any other way than without recourse?

Ans. Our customers, in almost every instance, give their notes payable to their own order, thus saving the necessity of endorsing without recourse. Bacheller's were always given so.

Cross-int. 11. Then Johnson & Thompson would not have endorsed it at all, would they?

Ans. They would not.

Cross-int. 12. Are you still connected in business with Johnson & Thompson?

Ans. Jan. 1st, 1870, Johnson & Thompson dissolved, making two firms out of one. I am a partner with the firm of Albert Thompson & Co.

Cross-int. 13. Do you not know, or have you not heard, that both Johnson and Thompson are sureties on a bond given by Edward
119 Turpin, the defendant in one of these cases, to pay to the assignees of Bacheller the judgment recovered therein?

Ans. I do know that they are sureties.

CHA'S F. HARRINGTON.

Deposition of George F. Breed.

FEBRUARY 7, 1871.

Int. 1. State your name, age, residence, and occupation.

Ans. George F. Breed; thirty-six; Lynn; merchant, 71 High street, Boston.

Int. 2. Are you acquainted with Jeremiah C. Bacheller, of Lynn; and if yea, how long have you known him?

Ans. I am; have known him eighteen years.

Int. 3. Were you ever connected with him in business; and, if yea, in what business, from what time to what time, and how?

Ans. Yes, in the shoe-finding business; partner with him six or eight years, ending June 20, 1868.

Int. 4. Please state whether upon or after the dissolution of your partnership with him, he received, as his part of the assets of the firm, anything, and how much?

(Objected to.)

Ans. After the dissolution of the firm, he received in merchandise, $24,907.55; in cash and in notes, $3,959.39.

Int. 5. Was this part of the assets of the firm?

Ans. It was the net amount due him after the liabilities of the firm had been paid.

Int. 6. Under what firm-name or style was your partnership with him conducted?

Ans. J. C. Bacheller & Co.

Int. 7. Do you know Edward Turpin, the agent of Novelli & Co.; and how long have you known him?

120 Ans. I do; ever since he has been their agent.

Int. 8. Did the partnership composed of the said Bacheller and yourself have transactions with said Novelli & Co.?

Ans. They did.

Int. 9. While said Bacheller was a partner with you, what was his habit in respect to remitting, or wishing to delay remittances, in the expectation of a decline of gold?

(Objected to.)

Ans. During the last two years of the copartnership he almost invariably requested me to delay remitting, expecting a lower premium on gold.

Int. 10. State whether or not this became a source of disagreement between you and him.

(Objected to.)

Ans. It was one of the prominent causes of our dissolution.

Int. 11. Do you remember whether or not you communicated to said Turpin that fact?

(Objected to.)

Ans. I did.

Int. 12. At the time of the dissolution of your firm, do you recollect the amount said Bacheller was reputed to be worth?

(Objected to.)

Ans. Mr. Bacheller informed me himself, at that time, that he was worth over $75,000.

Int. 13. Do you remember whether or not you communicated that to said Turpin?

(Objected to.)

Ans. I do not remember ever having communicated it to said Turpin.

(Objected to.)

Int. 14. State whether or not, in the summer of 1869, you communicated to said Turpin any report of any investigation of said Bacheller's affairs; and, if so, what?

(Objected to.)

Ans. I did say to Mr. Turpin that I had been informed that Mr.
121 Frazier, of Lynn, had investigated Mr. Bacheller's affairs, and reported that he could pay his debts in full, and have $15,000 left.

Int. 15. Do you recollect about what time it was that you made this statement to said Turpin?

(Objected to.)

Ans. It must have been a very short time before his failure; so short a time that the report of his failure surprised me very much.

Cross-interrogatories put to the witness (de bene esse) by J. A. Sawyer, one of the plaintiffs:

Cross-int. 1. At the dissolution of your copartnership with Bacheller, did you believe his statement that he was worth $75,000?

Ans. At that time I made an estimate of the value of the property I was certain he possessed, which estimated the amount at $43,000. He had for a number of years drawn liberally from the firm, and had some connection with other business firms in Lynn, and he informed me that the money he made there, and what he had saved out of what he had drawn, he had invested in bonds and mortgages. I had no knowledge which caused me to disbelieve his statement.

Cross-int. 2. State whether or not you believed the statement.

Ans. I had no special reason for disbelieving it. I didn't believe it nor disbelieve it.

Cross-int. 3. Where were you when you had the conversation with Mr. Turpin about Frazier's statement?

Ans. We had two conversations about the statement; one in my office, and the other in Mr. Turpin's office, in New York.

Cross-int. 4. Who was present at each conversation?

Ans. I do not remember that any one else was present.

Cross-int. 5. Who commenced the conversation about Bacheller's affairs at the interview in New York?

Ans. Mr. Turpin.

Cross-int. 6. Was the conversation in New York prior to the one in Boston?

Ans. I do not remember distinctly, but it's my impression that it was.

122 Cross-int. 7. Have you no means of fixing the date of your presence at that time in New York?

Ans. I have not.

Cross-int. 8. How did Mr. Turpin commence the conversation in New York, about Bacheller's affairs? What did he first say?

Ans. He asked me, as he usually did when he met me, how Mr. Bacheller was getting along.

Cross-int. 9. Was it in response to that question of Mr. Turpin that you gave him Frazier's statement?

Ans. It was in response to that question that I gave him that statement; but whether this was the first or the second time that I had done so, I do not distinctly remember.

Cross-int. 10. State all that Turpin said on the occasion, as nearly as you can?

Ans. In consequence of my recent dissolution with Mr. Bacheller, I had been very cautious not to say anything to Mr. Turpin about him first. My business with Mr. Turpin, at the time I called upon him in New York, was to consult with him about giving him further orders for lastings. I said to him that I could order more understandingly if I knew what other parties had ordered, and were having come forward. Mr. Turpin then showed me a memorandum of how many goods had been shipped to Mr. Bacheller, and during the conversation also showed me how much Mr. Bacheller owed him. Whether the statement of Mr. Frazier was then alluded to for the first time or not, I do not remember, but I do remember saying to Mr. Turpin that Mr. Frazier's reputation as a merchant was such, that if he had investigated Mr. Bacheller's affairs, and made such statement, it must be correct. I do not remember what Mr. Turpin said in reply, but he felt more comfortable about his account—more certain that he should get his pay.

Cross-int. 11. Who told you that Mr. Frazier made the investigation?

Ans. Dean Peabody, esq., of Lynn.

Cross-int. 12. Did you and Mr. Turpin afterwards have further conversation about Frazier's statement; and, if yea, when, where, and what was said?

123 Ans. I remember having two conversations with Mr. Turpin in reference to the matter, the one alluded to previously, and the one in my own counting-room.

Cross-int. 13. The one in your own counting-room was after the one in New York, was it not?

Ans. I have no means of determining which was the first.

Cross-int. 14. Did you ever have more than two conversations on that subject with Mr. Turpin?

Ans. I do not at present remember that I did.

Direct resumed:

Int. 1. I intended to ask you a question, upon direct examination, which I find I omitted; it is this: whether you remember to have communicated to said Turpin about the amount which said Bacheller received out of the assets of J. C. Bacheller & Co.?

(Objected to.)

Ans. I did make, to said Turpin, a communication of said amount.

Int. 2. When, or about what time?

(Objected to.)

Ans. I cannot state definitely; but shortly after the dissolution of the firm.

GEO. F. BREED.

Deposition of William F. Lawrence.

FEBRUARY 8, 1871.

Int. 1. State your name, age, residence and occupation, and how long that has been your occupation.

Ans. William F. Lawrence; forty-three; 71 Worcester street, Boston; banker and broker, fifteen years.

Int. 2. Do you know Jeremiah C. Bacheller, of Lynn, and how long have you known him?

124 Ans. Yes; from ten to twelve years.

Int. 3. Have you ever been engaged in buying or selling commercial paper; if yea, about how long, and about what proportion of it, in amount, was the paper of parties living or doing business in Lynn?

Ans. Yes, sir; fifteen years this month. I should think, perhaps, ten per cent.

Int. 4. About what proportion of the paper which you bought or sold prior to October, 1869, was paper owned or belonging to parties engaged in the shoe or leather trade or shoe-findings trade, in Boston or Lynn, or bearing the signature or endorsement of such parties?

Ans. I should say 75 per cent.

Int. 5. About what proportion of the paper which you bought or sold prior to October, 1869, was paper arising out of the shoe or leather trade?

Ans. From 98 to 99 per cent.

Int. 6. Where has been your place of business during the last fifteen years?

Ans. In the city of Boston.

Int. 7. Can you give us an idea of about the amount of paper arising out of the shoe and leather trade which you sold or bought per year prior to October, 1869? If so, please state the same generally.

Ans. My sales in the year 1869 were between $4,000,000 and $5,000,000; won't vary a hundred thousand dollars from four millions and a half. In 1868 perhaps $200,000 less than in 1869.

Int. 8. Were you absent from the United States in the year 1869; and if so, when did you leave Boston?

(Objected to.)

Ans. Yes; I left Boston August 23 or 24; sailed from New York the 25th.

Int. 9. When did you return to the United States?

(Objected to.)

Ans. March 14, 1870.

Int. 10. Do you recollect stating to Johnson & Thompson or

125 Charles F. Harrington, in 1869, that you could place or sell some of said Bacheller's paper?

(Objected to.)

Ans. I did state to them that I could.

Int. 11. Do you recollect about what time that was?

Ans. As near as I can recollect, within four or ten weeks of my going away; it might have been eight weeks.

Int. 12. Do you recollect at what rate you told them?

(Objected to.)

Ans. Twelve per cent. per annum; I also had an opportunity of placing some short paper at a less rate than 12 per cent. I had one or two opportunities of placing short paper at less than 12 per cent.; my impression is that one party offered to buy at 8 per cent.

Int. 13. For what name, and whether more than one name on the same paper, you had these offers?

(Objected to.)

Ans. My offers were for the paper of J. C. Bacheller, single name.

Int. 14. Had you previously to this sold paper bearing said Bacheller's name?

(Objected to.)

Ans. I had.

Int. 15. State whether, or not, prior to August 26, 1869, you had heard anything against the credit of said Bacheller, or heard his credit questioned.

(Objected to.)

Ans. I had not.

Int. 16. In the year 1869, prior to your leaving the United States, can you state what he was reputed to be worth?

(Objected to.)

Ans. I have heard his property estimated at seventy-five thousand dollars, in and out of his business.

Int. 17. Did you make him any loans in 1869; and, if yea, whether with or without security; and about what amounts, and about how frequently, and down to what time?

(Objected to.)

126 Ans. I did. I made him loans without any security, and also discounted notes bearing his endorsement. I have not looked at my books to figure the exact amount, but think that my transactions with him for two years previous to my going to Europe were more than $100,000. I should think that Mr. Bacheller was in my office during that time on an average once a week, sometimes more—some weeks he would not come in at all—down to the time of my going away.

Cross-interrogatories put to the witness (de bene esse) by J. A. Sawyer, one of the plaintiffs:

Cross-int. 1. What party offered to pay you for Bacheller's paper at 8 per cent.?

Ans. The short paper I was ordered by Mr. Bacheller to buy for him, if I could get it at 8 per cent. I refer especially to his ordering me once or twice to get the paper, if I could get it at 8 per cent.

Cross-int. 2. Did any one ever actually buy of you said paper at 8 per cent.?

Ans. I think not; I think the party who held the paper had sold it, or did not want the money; which, I do not remember.

Cross-int. 3. What sales did you ever make of said paper at less than 12 per cent.? Give the names of the purchasers.

Ans. The promissory notes of J. C. Bacheller were rarely in the market. I know of no sales made at the rate indicated. Still I may have sold some at less than 12 per cent. I cannot recall any one especial transaction at any price, more or less.

Cross-int. 4. Your transactions with Mr. Bacheller consisted chiefly in buying or getting bought the notes of other parties that he brought to you, did they not?

Ans. Exclusively that, or loans of money made to him.

Cross-int. 5. How large an amount of money did you loan him at one time after May, 1869? State as near as you can remember.

Ans. From $3,000 to $5,000; not over $5,000.

Cross-int. 6. These loans to Mr. Bacheller were on memorandum and intended to be paid shortly, were they not?

Ans. Yes, they were.

127 Cross int. 7. When you spoke to Mr. Harrington about placing Bacheller's paper at 12 per cent., who was the party you had in mind who would buy it at that rate?

Ans. I can't remember who made this special offer.

Cross-int. 8. Did this party mean Mr. Bacheller's promissory note in his offer?

Ans. He did.

Cross-int. 9. Can you state whether this party was or was not a shoe-manufacturer?

Ans. I cannot remember who the party was; but I am very sure it was a shoe man.

Cross-int. 10. Can you state whether or not said party was a customer of said Bacheller or bought goods of him?

Ans. I have not the sightest recollection who the party was.

Cross-int. 11. How many of Bacheller's own notes (with his name alone) do you estimate you placed, bought or sold in 1869?

Ans. I have no recollection of any special transaction, and know that they must have been very rare, indeed, as I rarely saw his paper.

Cross-int. 12. Do you think you sold three of such notes in 1869?

Ans. I do not think I sold more than three; that number would cover them. I know that I offered to buy some at 12 per cent. I thought the paper was all right.

Cross-int. 13. Of whom did you offer to buy such paper at 12 per cent.?

Ans. Of Johnson & Thompson, and I think of others, but I have no recollection of whom, except that I offered to buy once or twice of Mr. Faxon, of Faxon, Elms & Co.

Cross-int. 14. Were either of the offers to Johnson & Thompson or Faxon, Elms & Co., made in 1869?

Ans. The offer to Johnson & Thompson was in 1869; and I am confident that my offer to Mr. Faxon, of Faxon, Elms & Co., was made in 1869.

Cross-int. 15. Were not these offers made by you in response to questions put to you about Bacheller's standing?

Ans. I do not know whether they were or not. I would have
128 bought the paper with my own money at 12 per cent. I do not say that I would have bought it all along through 1869 at that rate, because there were times when single-name paper was not desired by the banks, but know of no time in that year, up to my departure for Europe, when I would not have bought a moderate amount. He stood as well with me the day I went away as he did at any time.

Cross-int. 16. Do you remember who ever told you that Mr. Bacheller was worth $75,000?

Ans. I think at the commencement of and during my transactions with him I asked his next-door neighbor, Mr. Doak, and also Messrs. Davis, Breed, or Spinney. Whether I made inquiries of all the four I cannot say. I have an impression that Mr. George F. Breed—when the firm was J. C. Bacheller & Co.—told me about the firm capital.

Cross-int. 17. Do you remember the particular occasions of asking either of said parties about Bacheller's standing and getting the reply that he was worth $75,000?

Ans. I made these inquiries about him along at the early part of my business with him. There were some notes I knew to be perfectly good even without his endorsements; there were other notes I knew nothing about, and would not have bought at any price without his endorsement. I do not recollect any particular date.

Direct resumed:

Int. 1. At the time that you offered to buy his paper at 12 per cent. per annum and had an opportunity to place it at that rate, how did that rate compare with the market-rate for good names?

(Objected to.)

Ans. That was a fair rate for single-name paper. While some paper would have sold for a less rate, much more would have sold at a far higher rate.

WILLIAM F. LAWRENCE.

129 FEBRUARY, 26, 1871.

The undersigned having, by agreement of parties, on file in the above-named causes, been appointed commissioner to take the testimony of certain witnesses, to be used in said causes, the deponents hereinbefore named personally appeared before me, at my office, in Boston, in said district, and they, having been first cautioned and sworn (except said Nichols, who made affirmation) to speak the truth, the whole truth, and nothing but the truth, relating to the cause for which their depositions were taken, each gave the deposition which is signed by him on the day or days named therein, and said depositions were respectively reduced to writing by me in the presence of said deponents, and read to and subscribed by them, respectively, in my presence.

FISHER AMES.

130 EXHIBITS.

In equity.

Plaintiffs and defendants put in the following exhibits:

EXHIBIT 2 A.—F. A.

LYNN, *July* , 1869.

Received of J. C. Bacheller a mortgage upon the Attwill property, on Atlantic street, for five thousand dollars, as collateral, on account.

EDW'D TURPIN.

Date, 27 July, 1869.

EXHIBIT 2 B.—F. A.

LYNN, 11*th August*, 1869.

Received of J. C. Bacheller a mortgage on the Exchange-street property for eight thousand dollars, as collateral, on account.

EDW'D TURPIN.

Date, 31st July, 1869.

EXHIBIT 2 C.—F. A.

LYNN, 11*th August*, 1869.

Received of J. C. Bacheller a mortgage upon the Bacheller-street property for two thousand dollars, as collateral, on account.

EDW'D TURPIN.

Date, 31st July, 1869.

[For mortgages marked exhibits 4, 5, and 6.—F. A., see pages 17–21, this volume.]

131 EXHIBIT 7, F. A.

5,000.] LYNN, *27th July*, 1869.

For value received, I promise to pay to Edward Turpin, or order, the sum of five thousand dollars, in one year from this date, with interest.

JEREMIAH C. BACHELLER.

In presence of—
RANDOLPH BURGESS.

EXHIBIT 8, F. A.

$8,000.] LYNN, *31st July*, 1869.

For value received, I promise to pay to Edward Turpin, or order, the sum of eight thousand dollars, in one year from this date, with interest.

JEREMIAH C. BACHELLER.

In presence of—
IRA J. PATCH.

EXHIBIT 9, F. A.

$2,000.] LYNN, *31st July*, 1869.

For value received, I promise to pay to Edward Turpin, or order, the sum of two thousand dollars, in one year from this date, with interest.

JEREMIAH C. BACHELLER.

In presence of—
IRA J. PATCH.

EXHIBIT 16.

BOSTON, *November 6th*, 1868.

EDWARD TURPIN, Esq.:

DEAR SIR: It was my intention to have remitted you by to-day's mail, but to remit when gold and exchange fluctuate as they have the past few days would be very imprudent. The bill I sent you the other day cost me 1.09⅞. To-day it is selling for 1.09½, with the pros-
132 pect that I shall be able to buy at 1.09¼ for next Tuesday's mail. I hold gold at 1.32⅛, which is the lowest point it has reached, to put against exchange. I shall, in all probability, remit you a bill next Tuesday; but, although I have ready means to send every dollar I owe to the other side, under no circumstances shall I remit in large amounts until I am convinced it has reached some settled point.

I have received advices from your house several times concerning the shield. My book-keeper wrote them instructions in the matter, but to-day I received advices stating they wished me to send the shield, which I do not understand. If the shield is at Lynn, I will send it to them by first mail.

Respectfully,

J. C. BACHELLER.
G. G. DREW.

EXHIBIT 17.

BOSTON, *November 24th*, 1868.

EDWARD TURPIN, Esq.:

DEAR SIR: Yours of yesterday is received, together with two letters from your Bradford house, and the contents noted. From the increased

steadiness of the market, and the feeling among the trade the past few weeks, I am convinced that my recent order for 50 cases lasting has been placed much to my advantage. With regard to these goods, it will be agreeable to me to have them follow immediately after the completion of orders already placed; but the 10 and 11 threads of the 26½-inch goods, I shall want delivered in January. With the exception of these 26½-inch goods, all my orders with you are to be "A" goods. With regard to the numbers, I will advise you at an early day.

Respectfully,

J. C. BACHELLER.
G. G. DREW.

133 EXHIBIT 25.

LYNN, *February 12th*, 1869.

EDWARD TURPIN, Esq.:

DEAR SIR: Please direct your letters to Lynn, Mass., in future, unless they are in answer to letters written from Boston, and oblige,

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 30.

LYNN, *March 5th*, 1869.

EDWARD TURPIN, Esq.:

SIR: Yours of the 4th of March is received, and contents noted. If the last of the invoices (say the last three) had been delivered to me as prompt as my other invoices, I could have sent another £1,000 easy before this; but the delay of ten or twelve days on each of the invoices makes a great deal more to me. It is vastly more easy for N. & Co. to deliver to one, and call for prompt returns, than for J. C. B. to deliver to 20 or 30, and get returns, to make returns to you. It seems to me you should appreciate this matter, and write to your English house to arrange the mails differently, to give me the goods promptly.

Respectfully, yours,

J. C. BACHELLER.
I. J. PATCH.

EXHIBIT 36.

LYNN, *April 20th*, 1869.

EDWARD TURPIN, Esq.:

DEAR SIR: Enclosed you will find "second" of exchange for £1,000 sterling, the "first" of which I have remitted to your Manchester house. Please acknowledge receipt, and oblige,

Yours, respectfully,

J. C. BACHELLER.
GEORGE G. DREW.

Please mail all matters to Lynn till further notice.

J. C. B.

134 EXHIBIT 37.

LYNN, *April 23d*, 1869.

E. TURPIN, Esq.:

SIR: Yours of the 21st inst. is received and contents noted. I thought

after the conversation with you last week, you understood my position. And as you can see as well as I can the changes and fluctuations of the money-market, you must see that it would be suicidal for me to rush in and buy my exchange. I am moving cautiously, and in so doing I am working for N. & Co.'s interests as well as my own, and am not disposed, after the discouragements of the last year, to spoil all prospects for the future by precipitancy now. I shall send exchange along as fast as I can with due regard to the situation.

Respectfully,

J. C. BACHELLER.
I. J. PATCH.

EXHIBIT 38.

LYNN, *May 12th*, 1869.

E. TURPIN, Esq.:

DEAR SIR: We have made search for the letter you spoke to Mr. Kimball about, but without success. I will return it to you if we find it.

There is a little movement in lastings, and if I can place any part of your goods to parties at cost or a little profit, and get paper I can turn to exchange immediately for you, I shall sell, but not otherwise.

Mr. Patch has been away upon the grand jury since you left; so he has had no time to execute the documents; will get through to-morrow night, and by Friday send the papers.

I enclose you the memorandum of goods you desired. Please excuse delay, and I remain,

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

135 EXHIBIT 39.

LYNN, *June 9th*, 1869.

E. TURPIN, Esq.:

SIR: I am moving the lasting-goods, and shall send on some entry-papers for you to sign by next mail. I have made arrangements, and shall commence remittances to you on next Tuesday, and send every mail after every Tuesday and Friday. I wish to make the matter satisfactory to you.

If I can arrange matters here I intend coming on the first of the week, and shall see you, I hope, by Monday or Tuesday next.

Please return the blanks as promptly as possible, and oblige,

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 40.

LYNN, *June 10th*, 1869.

E. TURPIN, Esq.:

SIR: I enclose you another batch of documents to sign. I hope to remit to-morrow, instead of waiting till Tuesday. Please return promptly.

I am selling these goods so that I can make a return from them, the

most of them in thirty days; and, before sixty days, I feel confident I can pay your whole account.

I am still hoping to meet you the early part of the week.

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 42.

LYNN, *June 17th*, 1869.

EDWARD TURPIN, Esq.:

SIR: It may be possible that, in consideration of the unsettled state of holiday week, I may be unable to arrange for a remittance to-morrow; if such should be the case, I shall endeavor to double the remittance on Tuesday.

136 I hope to be able to come on, but my business demands my attention closely, and it may be my visit will be delayed a few days.

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 42½.

LYNN, *May* 21, 1869.

E. TURPIN, Esq.:

DEAR SIR: I have been delaying, for some few days, moving towards selling lastings, but I have now engaged $10,000, at a basis of 1.41¼, and I think, if you coincide with me, it will be better for me to move a part of the goods, which I think can be done at 1.32 to 1.35 for 14, as some of the importers are stiff at higher rates.

Please write me your ideas as regards the selling of lastings.

With the very high rate of gold I have not been able to remit as I hoped, but if this state should hold on, to induce trade I shall resume.

I have been able, with considerable effort, to clear up S. B. & Co., as I will explain fully when I see you. The documents you refer to were mailed to you on Tuesday last, and can but wonder where they are.

Please write me what the market is on the other side, and as the B. & L. comes, I will enter the goods, same as the last. The B. of L. should come on soon, to save extra expense of storage, etc.

The letter containing the documents was directed to you, box 3531, New York.

Respectfully,

J. C. BATCHELLER.
IRA J. PATCH.

EXHIBIT 43.

LYNN, *June 19th*, 1869.

EDWARD TURPIN, Esq.:

SIR: I enclose your papers for entry, which please sign and return at your earliest convenience; the No. 357, one of the blanks, got torn up by a mistake of Kimball. I send you the signature of the one torn up.

137 I have made sale of the 14 L., 15 S., 16 S., and 18 S., and part of the 13 L., but a considerable portion is sold on 30 days, some

$10,000, and will need to lay and mature, while those that are collected at 1st of July can be discounted and remitted. I intend sending something every steamer, and increase materially, as I advance to the season of the maturity of my sales.

I can move more goods on the following grades, 14 AL., 16 AS., and 18 AS., and should think it would be advisable to order out all of those grades that are still due. In this matter you may do as you think best; my mind is as above. I have already sold more 14 AL. than I have on hand in bond.

Mr. Bacheller has again been prevented, by press of business, from coming to New York, but hopes soon to see you. All endeavors are now being used to bring to a successful completion the programme proposed to you.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 44.

LYNN, *June 22d*, 1869.

E. TURPIN, Esq.:

DEAR SIR: Enclosed you will find second of exchange for £246 11s. 6d., on Messrs. Geo. Martin & Co., London, which please forward. Enclosed, also, you will find entry-papers, which please sign and return.

With the decline of gold there seems to be a little softening of prices, but I have very nearly closed negotiations for the goods above 13 AL., and a few below. I have a decided advantage on the A quality. I am bound now to close up the whole lasting-account, and start again square. Many of these goods are sold for paper, which I shall collect upon the 1st of July, and swell the remittances. I trust, in the conclusion of this matter, to satisfy you entirely. I expect a statement 1st of July, including interest to date.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

138 EXHIBIT 45.

LYNN, *June 23d*, 1869.

EDWARD TURPIN, Esq:

SIR: Matters are moving very satisfactorily, and the programme proposed progresses finely, and it only needs the lapse of a few weeks—say thirty days more—to complete it. I enclose another small batch of papers for signature.

The ball keeps rolling.

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 47.

LYNN, *June 29th*, 1869.

EDWARD TURPIN, Esq.:

DEAR SIR: The occurrence of commencement-day at Harvard, which escaped my notice till this p. m., will prevent my remitting to-morrow,

but on Friday I will double the remittance, and on Tuesday next do my very best for a large one.

Please sign and return enclosed papers. Had the envelope containing the docs. of May 17th been opened? Please return the env. If, as I am informed by other parties, the price of L and S is falling off, I wish you to send word to have the whole of the balance of my goods shipped immediately. Please write and let me know how this is, that I may know whether to sell to arrive.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 49.

LYNN, *July 6th*, 1869.

E. TURPIN, Esq.:

SIR: I had intended sending you £2,000 to-day, but the holiday-week knocks all my arrangements in the head. Everybody is away; can't get my notes in, and can't get any discounts, because I can't get the 139 notes. I send you, however, £410 9s. 10d. on Messrs. Geo. Martin & Co., and shall, perhaps, be able to back it up on Friday again. I enclose docs. for 2 cases 12 AL. Send word along, if not already done, so to have all the goods come out. Stlg. is going off fat, and I must put them in the market or cancel.

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 52.

LYNN, *July 20th*, 1869.

EDWARD TURPIN, Esq.:

DEAR SIR: Enclosed you will find second of exchange, on Messrs. Geo. Martin & Co., London, amounting to £204 10s. 11d. sterling, at sixty days, the first of which I have remitted to your Manchester house. If found correct, please acknowledge receipt and oblige,

Respectfully,

J. C. BACHELLER.
J. F. KIMBALL.

I find that my proposition has not been discounted, except small portion, and because money is tighter; will do best I can.

J. C. B.
IRA J. PATCH.

EXHIBIT 54.

LYNN, *July 29th*, 1869.

EDWARD TURPIN, Esq.:

DEAR SIR: One of the documents require recording in Lynn, and two in Salem; but before that they need changing somewhat; it would be better, I think, for you to delay, till Saturday, your visit.

Yours, respectfully,

J. C. BACHELLER.
IRA J. PATCH.

140 EXHIBIT 55.

LYNN, *September 13th*, 1864.

ED. TURPIN, Esq.:

DEAR SIR: I fully intended to have been with you before this, but could not; certain business matters and some matters connected with Mr. Breed's case detain me. I will telegraph you when I start. I wish, when I do come, to spend two or three days, and cannot spare so much time just yet.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 56.

LYNN, *September 20th*, 1869.

E. TURPIN, Esq.:

DEAR SIR: I owe you an apology for the delay in the recording of the documents; but the delay does not cause any detriment to the interests of your house; it will hold upon the property, according to *to* the law of the land, and is therefore good.

Respectfully,

IRA J. PATCH.

EXHIBIT 58.

BOSTON, *March 23d*, 1868.

DEAR SIR: Your letter has been received, and contents noted.

We have already received notice from your English house that they have reserved for our house 10 cases of the "A" quality 27½ in. wide goods, and now you think they have 10 cases more.

There will soon be a change in our firm, and I intend to continue the business under the old firm-name after the 1st of July.

I will take the 20 cases of "A" goods named above; also, 10 cases regular goods, and will notify your English house by mail to-morrow, as regards kinds and date of shipments.

Please oblige me by coming to Boston before you sail for Europe, that we may arrange the details of our future trade.

Respectfully,

J. C. BACHELLER,
of J. C. Bacheller & Co.

141 EXHIBIT 63.

BOSTON, *June 9*, 1868.

Messrs. NOVELLI & CO.:

GENTS: All the goods ordered for J. C. Bacheller & Co. are sold to arrive, and therefore I desire that my new goods may come on promptly.

I am satisfied that there are goods enough already ordered to answer the demands for this season, and shall hardly feel authorized to order any more at present.

My object in writing this morning is to inquire of you when I can best place with you an order for 100 cases of the "A" quality goods—

Foster's make—to come by regular shipments, in November, December, January, February, March, and April.

I wish to place a large part of my orders on this line of goods, for they are appreciated by the best trade in Lynn, and I wish to place my orders understandingly for the next season.

Please advise me by return of mail with regard to this matter.

Please send me also a copy of the assortment of the ten cases of the regular quality goods, which is placed at 56s., and say how they are coming on, and oblige,

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

I have lost or mislaid the copy of the letter containing assortment of the 10 cases, and consequently cannot tell what it is.

EXHIBIT 64.

BOSTON, *June 15th*, 1868.

Messrs. NOVELLI & CO.:

GENTS: Since writing my last, of June 9th, I have, by posting up on the market, found cause to change my mind, and I think I may want more goods.

I find my new orders with you—which are but small ones—are moving easily for sale to arrive, and I wish you to place for me as you
142 best can for my advantage, an order for 20 cases of the "A" quality goods, and I expect I may want them out here before the time (Nov.) mentioned in my last letter of the 9th. In short, my object is to find whether I may not, by giving you the most of my orders for the season on this quality, have them placed as low as a common order of the regular quality, and, by placing the order in bulk, give the manufacturers more leeway, and be more sure of my goods for market when I want them.

Please say how you can place this order, and whether I will gain any concession by giving you the 100-case order.

I am progressing in closing up the old concern, and for the present I shall be found at No. 15 Pearl street, Boston, just one door below the old stand.

You will hear from me by every weekly steamer, and I trust we may do a large trade together the coming season.

Respectfully,

J. C. BACHELLER.
I. J. PATCH.

You may send my galloons on both orders as soon as convenient after receipt of this. J. C. B.

EXHIBIT 65.

BOSTON, *June* 19, 1868.

Messrs. NOVELLI & CO.:

GENTLEMEN: Please order for me at the lowest possible rate, and ship immediately, upon the closing up of goods already ordered by me,

20 cases "A" quality goods, to come in four successive shipments, as follows, viz.:

5	pc.	A.	L.
35	"	11	thread.
40	"	12	"
40	"	13	"
40	"	14	" L
10	"	15	" Serge
20	"	16	" "
10	"	18	"

5 cases.

143 Oblige me by pushing my orders along as fast as possible. I wait your reply to this and my last letter.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 66.

BOSTON, *June* 23, 1868.

Messrs. NOVELLI & Co.:

GENTLEMEN: Enclosed please find first of exchange on Robert Benson & Co., of London, for £1,000 sterling, which please pass to our credit. As the firm of J. C. B. & Co. is now dissolved, and as all goods now to come are sold to arrive, you will appreciate the necessity of an early delivery of all unfilled orders.

Very respectfully, yours,

J. C. BACHELLER & CO., *in Liq.*

EXHIBIT 67.

BOSTON, *June* 23, 1868.

Messrs. NOVELLI & Co.:

GENTLEMEN: Please send me as soon as possible—

40 pc. 14 th. Serge
20 " 16 " " } "A" quality.
20 " 18 " "

2 cases.

And send all my orders with your best despatch.

By the accompanying circular you will see the dissolution is complete; and, having disposed of all co. goods, I need my new ones immediately.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

144 EXHIBIT 68.

BOSTON, *July* 14, 1868.

Messrs. NOVELLI & Co.:

GENTS.: Yours of the 1st of July is received, and contents noted. On the 19th of June I sent you the particulars of the 20-case order, requesting you to place it, and deliver it in four successive fortnightly

shipments, of five cases each. I have also since had some conversation with your Mr. Turpin and Mr. Foster, as your Mr. T. will probably advise you.

My instructions to Mr. Turpin were to ship to me every fortnight, until further orders, five cases assorted, the same as the successive shipments mentioned above, thus giving me ten cases of goods every month; and then as I need more goods outside of this assortment, I can order of you as the need comes.

And, upon reading your letter, I think you would do well to order for me at the most favorable moment the 100 cases, arranging for the shipment as above, leaving a leeway, so that if I might want a case or two in haste I may be able to get them, in addition to the shipment of five cases per fortnight.

It is my intention to turn my trade on to the "A" quality goods, and I shall be able to control a considerable trade upon them.

Please advise me by each str. as to the market and the time of placing orders. Also, giving me my "A" quality orders as promptly as convenient.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 69.

BOSTON, *July* 21, 1868.

Messrs. NOVELLI & Co.:

GENTS.: I have, in connection with Mr. Breed, arranged your balance of account with J. C. B. & Co. for £4,279 6s., which I expect
145 will be mailed this evening, and hope will meet your approval. In the hurry of the day's business I cannot write any more at length now, but hope to do so on Friday next.

Meanwhile I am anxiously awaiting the arrival of my goods.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 70.

BOSTON, *July* 21, 1868.

Messrs. NOVELLI & Co.:

GENTS.: Enclosed we hand you first of exchange, at 3 days' sight, for £4,279 6s. 0d., in settlement as per statement annexed.

The invoice, June 25, 179–180, should be charged to ac. J. C. Bacheller, esq.

You have omitted to credit us with $25 gold (£5 2s. 3d.) paid Mr. Chappell, Jan'y 17th.

Yours, respectfully,

J. C. BACHELLER & CO., *in Liq.*

EXHIBIT 71.

BOSTON, *July* 24, 1868.

Messrs. NOVELLI & Co.:

GENTLEMEN: I have met Mr. Turpin to-day, and, upon comparing notes, find that there is due me as follows:

On the order of March 24th, 19 cases "A" quality.
" " " 28th, 6 " "Standards."
" " May 16th, 5 " "

And these goods I wish to have pushed forward as fast as possible, giving preference, if possible, to the grades above, viz, (higher) than 14 threads "A" quality.

And then immediately after conclusion of above orders, I wish you to send me the regular shipment of 5 cases every fortnightly steamer, assorted as follows, viz:

146

5 pc.	"A L"	40 pc.	14 "L"	5 cases.
35 "	11 "L"	10 "	15 "S"	
40 "	12 "	20 "	16 "	
40 "	13 "	10 "	18 "	

to be "A" quality; and if I wish any other goods, I will send an order to be outside of the regular shipments. And I wish it understood that all my orders in the future are to be placed upon the "A" quality, unless clearly and expressly stated to the contrary, in all, to the extent of 100 cases.

On the 23d of June I sent you an order for—

40 pc.	14 Serge	"A" quality.
20 "	16 "	
20 "	18 "	

which I would like as soon as possible.

Please exercise your own best judgment in placing my 100-case order for my advantage; and I mean for the future to concentrate my lasting-trade with your house.

Respectfully, yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 82.

BOSTON, *January* 2, 1869.

J. S. CHAPPELL, Esq.:

DEAR SIR: I received a letter from your Mr. Skelhorn yesterday, containing advices on the state of the market and the prospect of trade for the season. The lasting-market bears a steadier aspect than it has for some time past, and stock-holders seem determined to get higher prices. Large quantities of lastings have been arriving here at a low sterling, and sold at less figures than they could be replaced at the date of sale, consequently they have conflicted in a great measure with the profit on higher sterling goods; but these goods having been mostly disposed of, we are now able to get a small profit. With regard to my wide goods, although they cost more than the standard
147 goods in the market, and the establishing a reputation for them caused me much labor and anxiety, yet to-day from the feeling with regard to them, and the preference shown them by the best men in the trade, I feel that I have gained, in them, a perfect success. There will, in all probability, be a good trade for the next three months, therefore you will please use your best endeavors to urge my orders forward as speedily as practicable, so that I may be able to meet the trade at the proper time. Hoping to hear from you from time to time on the general prospect of trade, I remain,

Respectfully,

J. C. BACHELLER.
G. G. DREW.

EXHIBIT 85.

LYNN, *January* 19, 1869.

Messrs. NOVELLI & Co.:

GENTLEMEN: Please assort my order for one thousand pc. of lastings, which was placed at 61s. (14 threads standards,) as follows:

440 pc. A. L.
160 " 12 A. L.
120 " 14 "
200 " 16 A. S.
80 " 18 "

1,000 " 25 cases.

I wish you to send as soon as possible three or four cases of the A. L. to fill my orders which I intended to fill with the 26^2 in. goods, the order for which I countermanded. Also, a solid case of 18 A. S. The market here upon lasting goods has been rather for the interests of the buyer than the seller; prices have ranged very low, and, with the light demand and the continued high price of gold, there has been very little margin for the importer; the tendency is now for better prices, and I am glad to say that the manifest superiority of the A quality over other goods is making itself felt, and manufacturers can now appreciate them and are unwilling to take other makers' goods if A goods can be obtained.

148 It has been a labor with me to introduce and establish a trade upon these goods, and much time and capital has been expended to accomplish it, but now that it is accomplished I hope to reap a commensurate reward.

The value of these goods is acknowledged by all, and must lead to a steady increasing demand.

Trusting to receive larger shipments as my calls for goods are numerous, I remain,

Repectfully,

J. C. BACHELLER.
IRA J. PATCH.

I understand from Mr. Turpin that the speciality of the wide goods is confined to my trade, and that no other importer can obtain them. Please inform me if I am right in this—am I free from competition on these goods?

EXHIBIT 90.

LYNN, *February* 11, 1869.

Messrs. NOVELLI & Co.:

GENTLEMEN: Please send me on the 100-case order as soon as possible. 80 pc. 14 serge, A quality.

Also send me, in addition to the order of Jan. 19th, 25 cases.

80 pc. 14 serge, A quality.
80 " 16 " " "

160 pc.

I should like you to send me as many 14, 16, 18 thread as possible, as my calls are largely on these goods at present. I have been notified by the shipping merchants that there are two cases—316, 319—in the steamer, but I am not yet in receipt of the invoice or bill of lading. This is a little unpleasaut, and embarrasses me somewhat in clearing my other goods. In our future correspondence, please direct all invoices and B. and L. to Boston, Mass., but other matters to Lynn, Mass., and oblige,

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

149 EXHIBIT 95.

LYNN, *March* 12, 1869.

Messrs. NOVELLI & Co.:

GENTS: In the arrangement of our banking system we are troubled with quarter-day, which comes about the first of April. This tightens the whole money market, and it is almost impossible to get funds even upon the best of collateral and high rates.

This state of the money market will make it necessary for me to defer any considerable remittances until after that point, when I shall take immediate steps to reduce your account £2,000, and shall endeavor to keep it at that point.

In order to enable me to make my contracts good with my customers, and my remittances prompt to you, it is highly necessary to have my goods come forward immediately upon date of invoice, as in some cases I have not been able to clear my goods from steamer for thirty-five days from date of invoice.

Please send me by return of mail a statement of my account to the first of February, 1869, and oblige,

Respectfully yours,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 101.

LYNN, *April* 9, 1869.

Messrs. NOVELLI & Co.:

GENTS: Yours of the 27th March is received, and contents noted. As I wrote you, and as I wrote Mr. Turpin also, I intended then to have delayed my further remittances till the first of April, and then to have very soon after that date reduced the amount to the point mentioned. I was enabled, beyond my expectations, to remit you upwards of £1,200, before the first, and which you have before this received.

The money-market is now extremely hard, and as our business is mostly done upon credit, it is very difficult to collect cash funds. I have accounts out, uncollected, of over $40,000, sold upon credit, which, if I had it in notes, would scarcely be of any good at present, it is so hard to get loans upon it.

150 The market upon lastings had been very weak for a few weeks past, goods having been sold at prices below cost of landing. I had succeeded in placing many of my A goods upon very advantageous terms, and, after a long struggle, got them introduced and admitted by the manufc'ts to be very much superior to standard, when the fall on prices came. I had 12 AL placed at 1.22[2] per yard, and my customers

had 12 A goods, Foster's make, offered him and sold him at 1.13² per yard. I am not will'g to sacrifice your A goods at any such prices, and shall prefer to wait a better tone of the market, and this will also delay my proposed prompt reduction of account. This I deem to be just to you, as well as myself.

While I am very anxious to reduce my account with you, (and shall do so as speedily as possible,) I do not think you desire me to sacrifice goods to give you very prompt remittances, when a short delay will probably enable me to meet your wishes, without serious damage to myself.

As I have explained to Mr. T., I shall shortly put some $50,000 of real property upon the market, which, if successful, will give me means, for a considerable amount, to the credit of your account.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 103.

LYNN, *April* 27, 1869.

Messrs. NOVELLI & Co.:

GENTLEMEN: I have not been able to realize my desires in regard to remittances. As I wrote to Mr. T. and yourselves some time since, I intended to reduce my acc. materially. Mr. T. has probably informed you of the turn affairs have taken in the lasting trade. Importers here are slaughtering goods at prices that are appalling, and which I am entirely unwilling to sell at. I prefer rather you should stop shipments, and take my goods, that are laying in bond, to settle your accounts, if you choose so to do. I do not think it would be justice to you or myself to take goods from bond and sell at less than cost when, by wait-
151 ing till June, when trade will again start, I shall be able to turn myself and pay your demands and interestion the same, without spoiling myself and my trade, as I should do if should force things now.

I hold myself fully able to pay all my debts, but when goods lay in bonds and money lays in a large line of open accounts, notes, real estate, and personals, it is sometimes terribly inconvenient to do just as you would desire.

I shall do the utmost in my power to send you forward funds upon account, and hope you will be satisfied in the end I have done my best to arrange matters to our mutual satisfaction.

As regards the fortnightly shipments, if you are shipping me more goods, please send them in solid cases, and not follow the original assortment.

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

P. S.—Again, another reason for retaining goods in bond: Mr. T. has said if he hears of one of N. & C.'s customers selling goods less than cost, he gets no more goods (so I am informed.)

EXHIBIT 111.

LYNN, *June* 28, 1869.

Messrs. NOVELLI & Co.:—

GENTLEMEN: Since my last letter Mr. Turpin has probably kept you

well informed of my progress, and has probably written in regard to the shipment of the bal. of goods immediately. If the prices of lastings are weak or falling off, please ship everything remaining.

I find that the cut of the boots now in use call for 28 in. wide goods, and I wish you to inform me, at your convenience, whether the looms will make 28 inches plump, and the difference in price. I shall, when I order for next season, order A L to 13 A L, inclusive, in 27² in. goods, and 14 A L to 18 A S, inclusive, in 28 inches wide.

152 Please investigate and write fully on above and the market. I live in hopes, with a very good prospect of realization, of cleaning up my account during the coming month of July. Meanwhile I remain,

Respectfully,

J. C. BACHELLER.
IRA J. PATCH.

EXHIBIT 118.

Box 3,535. 50 LEONARD ST.,
NEW YORK, *April 10th*, 1869.

J. C. BACHELLER, Esq., *Boston:*

DEAR SIR: Your favor of yesterday is to hand, inclosing second of exchange, Boston, April 9th, 1869, sixty days, £208 11*s.* 6*d.*, on Geo. Martin & Co., by Blake Bros. & Co., and shall be forwarded to our Manchester house per next mail, with thanks. We are sorry at the smallness of the amount, as we fully expected at least one thousand pounds; the writer purposes being in your city on Wednesday or Thursday next, when he will do himself the pleasure of waiting upon you; in the mean time we hope you will try and send us a good remittance by next Wednesday's mail. Our Manchester house complain terribly. Please hold the second until our arrival.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 119.

P. O. Box 3,535. 50 LEONARD ST.,
NEW YORK, *April* 21, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of yesterday is to hand, inclosing second of exchange, Boston, April 20th, sixty days, for £1,000, on Geo. Martin & Co., by Blake Bros. & Co., which shall be forwarded to our Manchester house per next mail, with thanks. We must really press upon you the necessity of sending us a good amount for next mail, as on com-

153 paring your account we find there is nearly £400 owing on invoice of January 8th, and our Manchester house are pressing us strongly for money.

Asking your kind attention and utmost exertion to oblige us, we are, dear sir,

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 126.

Box 3,535. 50 LEONARD ST.,
NEW YORK, *May 24th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of the 21st was only to hand this morning; we have yet not received the bills of sale; we this morning made inquiries at our P. O., but no letter had been received there from you of the 18th inst. Please make inquiries at your post-office in Lynn.

We certainly must confess that we are greatly disappointed, having only received £206 3*s.* 8*d.* the whole of this month, with an overdue balance of £4,500; we are almost afraid to receive our Manchester letters, and certainly do not feel like taking any more lastings out of bond until this large overdue balance is greatly reduced. We purpose being in Boston on the 2d of June, and in the mean time must really have a handsome remittance, also the b's of sale, upon which please report per return mail.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 127.

P. O. Box 3,535. 50 LEONARD ST.
NEW YORK, *May 26th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of the 25th inst. was duly to hand. I have not yet heard anything of the two bills of sale; it is very strange how they could miss; we do not recollect any of our letters miscarrying
157 before. We feel a little sorry and disappointed that you should have sold the 3s, but under the circumstances we return you the withdrawal entry, properly signed. We purpose being in Boston on Wednesday next; so please not offer any more for sale until then; as a matter of course these are sold for cash, and the proceeds will be remitted to us right away. We wish to see you on Wednesday next. Please leave word at the Tremont House where and at what hour we can meet you.

We are surprised at your remarks about Winter, as we never named him in connection with you in any shape or way; we heard several hints thrown out in the street, (Pearl,) but we very carefully avoided any reply, and did not mention you in any way whatever. This can be easily proved, if you at all doubt it.

Please make duplicates of the bills of sale, and forward them to me per return post, so that I can report them to Manchester on Saturday, or they will really begin to think that your word cannot be at all relied upon. Second of exc. for £370 14*s.* 2*d.* is to hand.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 128.

Box 3,535. 50 LEONARD ST.,
NEW YORK, *May 29th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of yesterday is to hand, inclosing second of exchange, No. 1,634, Boston, May 28th, by Blake Bros. & Co., on Geo.

Martin & Co., London, £412 7*s.* 5*d.*, sixty days, and shall be forwarded to our Manchester house per next mail. We are sorry that the missing documents, or duplicates of them, were not inclosed; we fully expected them, and feel disappointed.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

158 EXHIBIT 129.

P. O. Box 3,535. 50 LEONARD ST.,
NEW YORK, *June* 10*th*, 1869.

J. C. BACHELLER, Esq., *Boston:*

DEAR SIR: Your favor of yesterday is duly received, and the withdrawal orders signed and returned to you per this post.

We feel disappointed that you do not purpose sending us a remittance for Saturday's steamer, as we have written our Manchester house that you would do so; we trust you will be able to carry out your promise of yesterday, and from Tuesday remit something every mail.

We are, dear sir, yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 130.

P. O. Box 3,535. NEW YORK, *June* 12*th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of the 10th was only to hand this morning, and the one you hoped to send on the 11th has not yet arrived; we hope you will send us a substantial remittance by Tuesday's mail, or we cannot at present sign any more withdrawal entries.

We have every confidence in your integrity, but our instructions from Manchester are such that we must either have a substantial remittance or more security, or hold the goods until the acc. is reduced. We shall be glad to see you in New York the early part of next week.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 131.

P. O. Box 3,535. NEW YORK, *June* 14*th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your two favors of the 11th was only to hand this morning, one enclosing second of exchange for £205 14*s.* 3*d.*, which
159 shall be forwarded to our Manchester house per next mail; at the same time we hope you will forward another first.

We return the withdrawal entries, duly signed, in the full faith that you will carry out your promises. We fully expect seeing you in New York in a day or two.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 132.

Box 3,535. NEW YORK, *June 21st*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Herewith we return you withdrawal-entries, duly signed. We expect you will send us a fair remittance for to-morrow's steamer, and the first week in July something that will really reduce the acc. We will write our people, per this st'm'r, to send out what they have in stock of 14 to 18 threads.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 133.

P. O. 3,535. NEW YORK, *June 23d*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of yesterday is to hand, with second of exchange for £246 11*s.* 6*d.*, which we will forward to Manchester in due course. Herewith we return you the withdrawal-entries, duly signed.

Trusting you will let us have another remittance by Saturday's steamer,

We are, dear sir, yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

160 EXHIBIT 134.

P. O. Box 3,535. NEW YORK, *June 25th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Herewith we return you the withdrawal-entries, properly signed, and sincerely trust you may realize your expectations. We are looking for small remittances by every mail and something considerable the first week in July. Your favor, although dated 23d inst., only came to hand this morning.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 135.

P. O. Box 3,535. NEW YORK, *June 26th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of yesterday is to hand, enclosing second exchange for £410 9*s.* 10*d.*, which shall be forwarded to our Manchester house in due course. The withdrawal-entries for four cases (not three, as you say) were returned duly signed.

We, this morning, got your document and letter dated the 15th ult. We have made inquiries at our post-office, but cannot learn anything as to the delay in delivery. The envelope has the Lynn postmark, May 17th, on it, and no other. Probably it would be as well to make one more inquiry at Lynn P. O., and say the letter only turned up to-day.

We are, dear sir, yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 136.

P. O. Box 3,535. NEW YORK, *June 30th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of the 28th was only to hand this morning. Herewith we beg to return the withdrawal-entries, duly signed. From our advices from Bradford, L. and S. are not likely to be much, if any, lower. Fosters would take an order to-day at 60*s.* for stand-
161 ards, but not less, and do not want large orders at that price.

The writer purposes being in Boston next week, and will have the pleasure of seeing you, and will bring the documents of May 17th with him. We may add that the envelope did not seem to have been tampered with at all, although much worn, but we will let you see it on our visit.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 138.

P. O. Box 3,535. NEW YORK, *July 7th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

Your favor of yesterday is to hand, enclosing second of exchange for £410 9*s.* 10*d.* by Blake, Bros. & Co., Boston, July 6th, on Geo. Martin & Co., London, and shall be forwarded to Manchester in due course.

Herewith we return you the two withdrawal-entries, duly signed. As we advised you on the 21st ult., we wrote our English house that you thought it advisable that all your goods that were ready should come out right away, and expect their reply in due course.

We have to delay our visit to Boston until next week.

Yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 139.

TREMONT HOUSE, BOSTON, *July 15th*, 1869.

J. C. BACHELLER, Esq.:

DEAR SIR: I arrived here yesterday morning, and have called at the Merchants' Exchange Board several times, but have not been fortunate enough to find you there. If convenient, I shall be glad to meet you there at 11 o'clock to-morrow (Friday) morning, or if you will call at the Tremont House and fix any other time and place, I will try and attend to it.

Yours truly,

EDW'D TURPIN.

162 EXHIBIT 140.

P. O. Box 3,535. NEW YORK, *July 21st*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of yesterday is to hand, with second of exchange No. 1835, Boston, July 20th, £204 10*s.* 11*d.*, which shall be for-

warded to our Manchester house in due course. We are sorry the amount is so small, and must urge you to try your utmost to increase it per Friday's mail.

We are, dear sir, yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 142.

P. O. Box 3,535. NEW YORK, *August 9th*, 1869.

I. J. PATCH, Esq., *Lynn:*

DEAR SIR: I purpose leaving this for Boston to-morrow (Tuesday) evening, and coming on to Lynn on Wednesday. I think the cars leave somewhere about 9 o'clock a. m. If not fully convenient to you, address me a note to the Tremont House, Boston, saying when and where I can see you, to be in Boston (the note) on Wednesday morning.

I am, dear sir, yours truly,

EDW'D TURPIN.

EXHIBIT 143.

P. O. Box 3,535. NEW YORK, *August 16th*, 1869.

J. C. BACHELLER, Esq.:

DEAR SIR: Herewith we hand you invoice B & L ship J. charges, etc., of 5*s*. lastings and serges per steamer Malta, which you will please enter in due course, and transfer to the writer in the usual way, and advise us of the same per post.

We were greatly disappointed that Mr. Patch did not keep his appointment on Saturday last, as from what Mr. B. said when in
163 New York we wrote our people in England that we would give them per this mail some positive information as to how his affairs really stood, and came to Boston in a great measure on that account; and now, having put it off for ten days or two weeks, they must certainly think that we are trifling with them, and do not realize the importance of the amount involved. We should not be at all surprised to receive some very unpleasant instructions per return mail, and certainly cannot blame our Manchester house if they so instruct us. We are disposed to do all we can to assist you, but there must be a limit to this vacillation or they (our Manchester house) must naturally conclude that it is all a subterfuge.

We are, dear sir, yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

EXHIBIT 144.

P. O. Box 3,535. NEW YORK, *Sept 15th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: Your favor of the 13th inst. was only to hand this morning. I had intended being in Boston to-day, but had a very severe attack of diarrhœa this morning; however, I am somewhat better, and purpose being with you on Friday and Saturday, and shall be glad to meet you at the Tremont House either morning at eleven o'clock, if you will let me know when you will be there.

Our Manchester people say, in our letters received to-day, that they are very much disappointed at not receiving the promised statement of your stock-taking, etc., etc., and think you are treating us very roughly after all the kindness we have shown. This I must certainly endorse, as it does not cost anything except a little labor, and shows, I think, great indifference as to our interest or feelings. We trust you will meet us on Friday or Saturday morning with a full statement as to your accounts, etc., etc., and please advise us before 10 o'clock on Friday morning, at the Tremont House, which day will be most convenient, and at what hour you will be there.

We are, dear sir, yours truly,

A. NOVELLI & CO.
EDW'D TURPIN.

164 EXHIBIT 145.

BOSTON, *September 18th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: I duly received the three documents, but am grieved and surprised to find that they were only recorded on the 15th and 17th inst., as Mr. Patch promised me when I was in Lynn a month ago, that they should postively be recorded the next or next following day without any doubt.

I trust Novelli & Co. will not suffer from this gross neglect of mine in not having them recorded myself. Please say per return post if the delay makes any difference, and oblige,

Yours truly,

EDW'D TURPIN.

EXHIBIT 147.

P. O. Box 3,535. NEW YORK, *September 27th*, 1869.

J. C. BACHELLER, Esq., *Lynn:*

DEAR SIR: I feel disappointed at not receiving the withdrawal papers, as asked for, and promised by yourself and Mr. Patch, and very much surprised to find that cases 357, 358, 362, and 391 are yet in bond, after what you told me on Thursday last, that they had positively been taken out. I shall have a most dismal picture to show Mr. Skelhorn on his arrival, and hoped somewhat to brighten it by having the above paper to show him.

Yours, respectfully,

EDW'D TURPIN.

165 District court U. S., Massachusetts district, *ss:*

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

Interrogatories propounded by the respondent, Edward Turpin, in the above causes, to Charles Hardy Bowker, of Pendleton, and Francis Koenig, of Bowden, both near Manchester, in England, witnesses to be examined on behalf of said respondent.

Int. 1. State your name, age, residence, and occupation.

Int. 2. Do you know the firm of Novelli & Co.?

Int. 3. Who composed said firm of Novelli & Co. during the year eighteen hundred and sixty-nine? and state whether, or not, you are, or were, a member of that firm; and if yea, during what period of time you were, or have been, a member of that firm.

Int. 4. Do you know Jeremiah C. Bacheller, of Lynn, Massachusetts, who is now in bankruptcy?

Int. 5. State when, for the first time, you had any cause to believe said Bacheller to be insolvent, or in contemplation of insolvency.

(Objected to.)

Int. 6. If, in answer to the next preceding interrogatory, you state when you first had cause to believe said Bacheller to be insolvent, or in contemplation of insolvency, please state whether, or not, prior to that time, you believed or supposed, or had any cause or reason to believe or suppose, that said Bacheller was insolvent, or in contemplation of insolvency.

(Objected to.)

Int. 7. State when, for the first time, you had any cause to believe that said Bacheller had not property and means sufficient to meet and pay his liabilities in full, as they matured.

(Objected to.)

Int. 8. If, in answer to the next preceding interrogatory, you state when, for the first time, you had any cause to believe that said
166 Bacheller had not property and means sufficient to meet and pay his liabilities in full, as they matured, please state whether, or not, prior to that time, you believed or supposed, or had any cause or reason to believe or suppose, that he had not property and means sufficient to meet and pay his labilities in full, as they matured.

(Objected to.)

BROOKS & BALL,
Sol'rs for said Turpin.

District court U. S., Massachusetts district, *ss:*

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

Cross-interrogatories, (de bene esse,) propounded by the said petitioners to Charles Hardy Bowker and Francis Koenig, witnesses to be examined on behalf of said respondent:

Cross-int. 1, (de bene esse.) Did you, or any member of the firm of Novelli & Co., or any one in their employ, or by their authority, write any letters to Edward Turpin, from April 1st, 1869, to October 14th, 1869, having any reference whatever to Jeremiah C. Bacheller, or his affairs, or to the dealings or accounts between said Bacheller and Novelli & Co., or to the property sold by said Novelli & Co. to said Bacheller? and if yes, give the dates of each of said letters.

(Objected to.)

Cross-int. 2, (de bene esse.) Are copies of said letters in existence? If yes, where are they, and if not, when did they cease to exist?

(Objected to.)

Cross-int. 3, (de bene esse.) Annex copies of all said letters, and
167 declare, in your answer to this question, whether you have annexed copies of all of said letters; and if not, why not. Answer this question fully.
(Objected to.)

BENJ. DEAN, *Pl'tffs' Atty.*

A true copy of direct and cross-interrogatories.
Attest:

EDWARD DEXTER, *Clerk.*

District court U. S., Massachusetts district, *ss:*

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

Answers to interrogatories propounded by the respondent Edward Turpin, in the above causes, to Charles Hardy Bowker, of Pendleton, near Manchester in England, a witness to be examined on behalf of said respondent.

Int. 1. My name is Charles Hardy Bowker. I was fifty-seven years old on the 21st day of October last. I reside at Pendleton, near Manchester aforesaid, and am a merchant.

Int. 2. I know the firm of Novelli & Co.

Int. 3. In the year 1869 the said firm of Novelli & Co. was composed of Augustus Henry Novelli, of London, in England, myself, and Francis Koenig, of Manchester aforesaid. I have been a member of the said firm for twenty-two years and upwards.

Int. 4. I do not know Jeremiah C. Bacheller, of Lynn, Massachusetts, personally.

Int. 5. The 4th day of October, 1869, was the first time I had any cause to believe the said Bacheller to be insolvent, or in contemplation of insolvency.

Int. 6. Prior to that time I did not believe, or suppose, nor had I any cause or reason to believe or suppose, that said Bacheller was insolvent, or in contemplation of insolvency.

168 Int. 7. Since the month of March, 1869, said Bacheller had allowed the moneys owing by him to Novelli & Co. to get considerably in arrear. I thought from this that he was trading beyond his capital, he being, as I had been informed, engaged in large transactions with other houses, and also largely concerned in speculations in gold; but it did not give me cause to believe that he would not be ultimately able to meet his liabilities; and, prior to the said 4th of October, 1869, I did not believe that such would be the case.

Int. 8. Save as mentioned in the answer immediately above, I never believed, or had cause to believe, prior to said 4th October, 1869, that said Bacheller would not be ultimately able to meet his liabilities.

C. H. BOWKER.

I, Alfred Leaf, of the city of Manchester, in the county of Lancaster, in England, gentleman, notary and tabellion public by royal author-

ity, duly admitted and sworn, do attest that, in pursuance of the commission in the above causes, bearing date the twenty-fifth day of October, one thousand eight hundred and seventy, and addressed to any notary public or United States consul or vice-consul, at Manchester, England, on this twenty-fifth day of November, one thousand eight hundred and seventy, before me personally came Charles Hardy Bowker, of Manchester aforesaid, merchant, known to me to be the person described in the said commission, and who signed the foregoing answers to the interrogatories attached to such commission, and he acknowledged and swore that the foregoing answers were respectively true answers to such interrogatories.

ALFRED LEAF,
Notary Public, Manchester.

169 District court U. S., Massachusetts district, *ss :*

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

Answers to cross-interrogatories (de bene esse) propounded by the said petitioners to Charles Hardy Bowker, a witness to be examined on behalf of said respondent.

Cross-int. 1, (de bene esse.) Certain letters were written by myself or some member of the firm of Novelli & Co., or by some one in the employ of the said firm, or by the authority of the said firm, to the house of Novelli & Co., New York, between the first day of April, 1869, and the 4th day of October, 1869, which letters, or some of them, contained references to Jeremiah C. Bacheller and his affairs, and to the dealings and accounts between said Bacheller and Novelli & Co., and to the property sold by said Novelli and Co. to said Bacheller.

The following are the respective dates of such letters: 3d, 10th, 14th, 17th, 20th, and 24th April; 1st, 6th, 8th, 15th, 22d, and 29th May; 5th, 10th, 17th, and 26th June; 1st, 10th, 15th, 17th, 22d, and 27th July; 3d, 5th, 14th, and 21st August; 2d, 4th, 11th, 18th, and 25th September; and 2d October, 1869.

Cross-int. 2, (de bene esse.) Copies of the said letters are in existence, and are appended hereto.

Cross-int. 3, (de bene esse.) Copies of all of the said letters are annexed.

C. H. BOWKER.

I, Alfred Leaf, of the city of Manchester, in the county of Lancaster' in England, gentleman, notary and tabellion public by royal author ity, duly admitted and sworn, do attest that, in pursuance of the com mission in the above causes, bearing date the twenty-fifth day of Octo ber, one thousand eight hundred and seventy, and addressed to
170 any notary public or United States consul or vice-consul, at Manchester, England, on this twenty-fifth day of November, one thousand eight hundred and seventy, before me personally came Charles Hardy Bowker, of Manchester aforesaid, merchant, known to me to be

the person described in the said commission, and who signed the foregoing answers to the cross-interrogatories attached to such commission, and he acknowledged and swore that the foregoing answers were respectively true answers to such cross-interrogatories.

[L. S.] ALFRED LEAF,
Notary Public, Manchester.

District court U. S., Massachusetts district, *ss:*

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN.

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

Answers to interrogatories propounded by the respondent Edward Turpin, in the above causes, to Francis Koenig, of Bowden, near Manchester in England, a witness to be examined on behalf of said respondent.

Int. 1. My name is Francis Koenig. I was fifty-four years old on the 20th day of July last. I reside at Bowdon, near Manchester aforesaid, and am a merchant.

Int. 2. I know the firm of Novelli & Co.

Int. 3. In the year 1869 the said firm of Novelli & Co. was composed of Augustus Henry Novelli, of London, in England, myself, and Charles Hardy Bowker, of Manchester aforesaid. I have been a member of the said firm for twenty-two years and upwards.

Int. 4. I do not know Jeremiah C. Bacheller, of Lynn, Massachusetts, personally.

Int. 5. The 4th day of October, 1869, was the first time I had any cause to believe the said Bacheller to be insolvent, or in contemplation of insolvency.

171 Int. 6. Prior to that time I did not believe, or suppose, nor had I any cause or reason to believe or suppose, that said Bacheller was insolvent, or in contemplation of insolvency.

Int. 7. Since the month of March, 1869, said Bacheller had allowed the moneys owing by him to Novelli & Co. to get considerably in arrear. I thought from this that he was trading beyond his capital, he being, as I had been informed, engaged in large transactions with other houses and also largely concerned in speculations in gold; but it did not give me cause to believe that he would not be ultimately able to meet his liabilities; and prior to the said 4th of October, 1869, I did not believe that such would be the case.

Int. 8. Save as mentioned in the answer immediately above, I never believed, or had cause to believe, prior to said 4th October, 1896, that said Bacheller would not be ultimately able to meet his liabilities.

F. KOENIG.

I, Alfred Leaf, of the city of Manchester, in the county of Lancaster, in England, gentleman, notary and tabellion public, by royal authority, duly admitted and sworn, do attest that, in pursuance of the commission in the above causes, bearing date the twenty-fifth day of October, one thousand eight hundred and seventy, and addressed to any notary pub-

lic or United States consul or vice-consul at Manchester, England, on this twenty-fifth day of November, one thousand eight hundred and seventy, before me personally came Francis Koenig, of Manchester aforesaid, merchant, known to me to be the person described in the said commission, and who signed the foregoing answers to the interrogatories attached to such commission, and he acknowledged and swore that the foregoing answers were respectively true answers to such interrogatories.

[L. S.] ALFRED LEAF,
Notary Public, Manchester.

172 District court U. S., Massachusetts district, ss:

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN

JABEZ A. SAWYER ET AL.
vs.
EDWARD TURPIN ET ALS.

Answers to cross-interrogatories (de bene esse) propounded by the said petitioners to Francis Koenig, a witness to be examined on behalf of said respondent.

Cross-int. 1, (de bene esse.) Certain letters were written by some member of the firm of Novelli & Co., or by some one in the employ of the said firm, or by the authority of the said firm, to the house of Novelli & Co., New York, between the 1st day of April, 1869, and the 4th day of October, 1869, which letters, or some of them, contained references to Jeremiah C. Bacheller and his affairs, and to the dealings and accounts between said Bacheller and Novelli & Co., and to the property sold by said Novelli & Co. to said Bacheller.

The following are the respective dates of such letters: 3d, 10th, 14th, 17th, 20th, and 24th April; 1st, 6th, 8th, 15th, 22d, and 29th May; 5th, 10th, 17th, 26th June; 1st, 10th, 15th, 17th, 22d, and 27th July; 3d, 5th, 14th, and 21st August; 2d, 4th, 11th, 18th, and 25th September; and 2d October, 1869.

Cross-int. 2, (de bene esse.) Copies of the said letters are in existence, and are appended hereto.

Cross-int 3, (de bene esse.) Copies of the said letters are annexed.

F. KOENIG.

I, Alfred Leaf, of the city of Manchester, in the county of Lancaster, in England, gentleman, notary and tabellion public, by royal authority, duly admitted and sworn, do attest that, in pursuance of the commission in the above causes, bearing date the twenty-fifth day of October, one thousand eight hundred and seventy, and addressed to any notary public or United States consul or vice-consul at Manchester, England, on this twenty-fifth day of November, one thousand eight hundred
173 and seventy, before me personally came Francis Koenig, of Manchester aforesaid, merchant, known to me to be the person described in the said commission, and who signed the foregoing answers to the cross-interrogatories attached to such commission, and he acknowledged and swore that the foregoing answers were respectively true answers to such interrogatories.

[L. S.] ALFRED LEAF,
Notary Public, Manchester.

UNITED STATES CONSULATE, *Manchester, England.*

I, C. H. Branscomb, consul of the United States of America at Manchester aforesaid, do certify and make known, to whom it may concern, that Alfred Leaf, of the city of Manchester, before whom the annexed affidavits hath been made, and whose true seal and signature is subscribed thereto, was at the time of taking and signing same a notary public, duly authorized and admitted, and that to all acts by him so done full faith is due and ought to be given in judicature and throughout.

In testimony whereof I have hereunto signed my name and affixed the seal of this consulate this twenty-sixth day of November, 1870, and in the 90th year of the Independence of the United States.

[L. S.] C. H. BRANSCOMB,
United States Consul.

174 MANCHESTER, *September* 25, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller noted.—We can only repeat our suggestion for the employment of the utmost vigilance in the oversight of this account. Soon after Mr. Skelborn's arrival we look for your combined opinion in this matter.

We are, &c.,
(Signed) NOVELLI & CO.

MANCHESTER, *Sept.* 18, 1869.

Messrs. NOVELLI & Co., *New York*:

J. C. Bacheller noted.—We must have this acc. reduced, and that soon.

We are, &c.,
(Signed) NOVELLI & CO.

MANCHESTER, *Sept.* 11, 1870.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We have not rec'd any remittance since ours of the 14th ult. We understood the goods delivered were all sold. If so, where are the proceeds? We should suppose a man whose affairs are in such an uncertain, if not critical state should not be "soldiering," or even absent from his business a moment.

(Signed) NOVELLI & CO.

MANCHESTER, *Sept.* 2, 1870.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We note your remarks. Having gone on to Boston and Lynn for the special purpose of investigating the position of B.'s affairs, as shown by his books, we think it is a pity you did not satisfy yourselves, before returning, what his present ability to pay may be, and then to state what our prospects are for an early settlement, or for settlement at all. B's account for goods delivered still shows a balance of over £6,000, and this is sadly too much to be owing by one who has so frequently broken his promises to keep faith with us. In fact,
175 we consider this matter is too serious to be trifled with any longer, and B. must have lost more money than he is willing to admit, or he never had the capital he was reported to have had. We await more precise intelligence, please.

(Signed) NOVELLI & CO.

MANCHESTER, *August* 21, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We are afraid his affairs are in a very bad way, and we must request you to obtain and retain all the security you can. The fact of his property being already mortgaged to other holders renders the reputed security, now in your possession, of very doubtful value. In addition, his promises have been so very specious and unreliable, and knowing his gold-dealing propensity, we fear he may not be sufficiently sensitive of his position, nor of our requirements. We await anxiously the result of your investigations when in Boston and Lynn.

(Signed) NOVELLI & CO.

MANCHESTER, *August* 14, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—Since our No. 35 we have received only two small remittances, making collectively £499 1*s.* 10*d.* Thus his promise of the 28th June, to settle up in July, is not fulfilled, nor nearly so.

(Signed) NOVELLI & CO.

MANCHESTER, *August* 3, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller noted.—We now enclose a further invoice for 5 cases lastings, B. L., and charges, severally, for £677 13*s.* 0*d.*, and £2 12*s.* 9*d.*, to hold as per our previous instructions.

(Signed) NOVELLI & CO.

176 MANCHESTER, *July* 27, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—Say $\frac{\text{J. C. B.}}{\text{B.}}$ 403–407, £661 9*s.* 0*d.*, and cases 408–412 for £630 11*s.* 0*d.*; also note of charges for £5 0*s.* 1*d*, upon the same, to be held as usual.

We also beg to hand you, for transfer to J. C. B., on perusal, an extract of his account, made up with interest at 5 per cent. per annum, to the 30th June ulto., showing a balance, then existing, due to ourselves of £12,398 8*s.* 9*d.*, since reduced, as per contra side, to £10,183 8*s.* 3*d.*

We again call your attention to an extract from his letter of the 28th June, quoted in our No. 31.

(Signed) NOVELLI & CO.

MANCHESTER, *July* 22, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—Herewith please find B. L. invoice, and charges 8 c. lasting $\frac{\text{J. C. B.}}{\text{B.}}$ 395–402 for £998 11*s.* 3*d.*, and £3 19*s.* 4*d.*, respectively, to hold as previously advised.

(Signed) NOVELLI & CO.

MANCHESTER, *July* 17, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We also are disappointed, and we are afraid, from

past experience, that B. is as fertile in making excuses as he is in promises. We can only urge your constant reminders, to facilitate his payments.

(Signed) NOVELLI & CO.

MANCHESTER, *July* 15, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller has remitted £205 9*s.* 8*d.* since our last.

(Signed) NOVELLI & CO.

177 MANCHESTER, *July* 10, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We note you have handed over the documents for 23 cases to him, and that 24 cases still remain in your possession. In a letter received this a. m., Bacheller urges us to ship the balance of his goods immediately, which we have decided to do, transferring the documents to yourselves in the usual way. J. C. B. further says, "I live in hopes, with a very good prospect of realization, of clearing up my account during the coming month of July,"—dated 28th June. We hope so too.

We are, dear sirs, yours truly,

(Signed) NOVELLI & CO.

MANCHESTER, *June* 26, 1869.

Messrs. NOVELLI & Co., *New York:*

J. Bacheller has remitted two several amounts of £205 14*s.* 3*d.* and £205 9*s.* 7*d.* since our last. We note your remarks on the position of this account, and can only hope that we may get out without loss. Had B. put "his shoulder to the wheel" earlier, by attending more closely to his legitimate affairs, instead of dabbling in gold, leaving his business in *ir*responsible hands, and talked less, his matters would have borne a different aspect at the present time. Continue to use every check upon him, and obtain all the security possible, please.

We are, dear sirs, truly yours,

(Signed) NOVELLI & CO.

MANCHESTER, *June* 17, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We are anxious to know the result of your visit and conference in Boston.

We are, dear sirs, yours truly,

(Signed) NOVELLI & CO.

178 MANCHESTER, *June* 10, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—If the houses, over which you hold the bills of sale, are really mortgaged, we do not see that your document is of any value whatever, and we certainly do think that we should have some tangible security in view of B.'s large indebtedness to ourselves, and in the present condition of the lasting-trade, so far as the goods in bond may be hereafter affected by any fall in prices here and in America. We have

received two small remittances of £370 14*s.* 2*d.*, and £412 7*s.* 5*d.* since our last.

J. C. Bacheller.—Oblige us by sending a list of the invoices, B L's, and their amounts you now hold, with the corresponding shipping charges.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

MANCHESTER, *June* 5, 1870.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller, we are afraid, has not been as ingenuous in his explanation of his affairs to yourselves as he ought to have been; and his continued dabbling in gold-matters, wherein the risks of loss are so great, and the chances of gain so very small, renders it a matter of absolute necessity that the greatest circumspection and firmness on your part must be exercised to pilot our affairs to a safe termination, the sooner the better.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

MANCHESTER, *May* 29, 1869.

Messrs, NOVELLI & Co., *New York:*

J. C. Bacheller.—Supplementing our previous remarks, we think it will be prudent for you to continue to hold the bill of sale for the
179 houses in Lynn and thereabout, not only for the overdue balance now existing, but as an additional lien and security for the goods now lying in bond, in Boston, and those yet to be shipped, in our hands.

Referring to your observations, Bacheller's object in postponing the sale of the goods and soliciting our forbearance is, that he may not sacrifice his profits or capital unduly. We therefore wish to impress upon you that it is only reasonable we should have some security for the ultimate payment of the goods in full, and especially in the event of any depreciation in prices hereafter, and prior to the whole of the goods being transferred to and sold by Bacheller.

Hence our suggestion to retain the bill of sale until the account and goods now held be placed on a safer basis.

It is also desirable and necessary that J. C. B. should be urged to be prompt in his remittances, on the transfer of the goods, and for the present open account. We had hoped certainly to have been in possession of funds by this time, and we look anxiously for his enclosures by each successive mail.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

MAY 22, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller noted.—And we trust we may not only avoid any risk in future, but also to dispose of the "A" goods without loss.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

MAY 15, 1869.

Messrs. NOVELLI & CO., *New York:*

J. C. Bacheller.—The last batch of goods in transit being mainly on board the Malta, sailing on Tuesday last, we now hand you our invoice for 9 c. $^{J.\,C.\,B.}_{B.}$ 386–394, for £1,172 15*s.* 10*d.*, dated 4th May, with our B. L. 8, and copy of shipping charges for $^{J.\,C.\,B.}_{B.}$ 381, and 383–391, say £5 6*s.* 10*d.*, for disposal as per previous instructions.

180 We anxiously look forward for your reply to our No. 19, and we trust no opportunity will be overlooked in disposing of the goods now in bond to suitable and safe hands, if so needed.

We are, dear sirs, yours truly,

(Signed) NOVELLI & CO.

MAY 8, 1869.

Messrs. NOVELLI & CO., *New York:*

DEAR SIRS: Confirming our letter of the 6th inst., we received last evening your telegram from Boston of yesterday—"Arranged with B.; stop shipping until further advised;"—being in reply to our No. 19 in the matter of J. C. Bacheller. From the above we naturally conjecture that you have received payment or collaterals to cover his overdue balance, which now amounts to about £3,600, for goods actually delivered.

We have stopped the shipment of all the goods we possibly could until we have your further advices. Inclusive of our invoice of the 19th March for £860 12*s.* 0*d.*, you will now hold various invoices and charges, amounting to £4,520 9*s.* 7*d.* Of course we are anxious to know what certainty, or even possibility, now exists that Bacheller will or can utilize, and pay for the goods you hold back, as above stated.

In the event of B. not being in a position to take the said goods in reasonable time, will it not be better and safer to dispose of the same to our other customers, and thereby take advantage of the continued firm condition of our market and yours? In addition to which, we have about £4,000 of goods still to ship, either now ready or in preparation.

Upon the very first moment that B. offered his order for 4,000 p's, we expressed our reluctance that our contract should have been so apportioned, and regretted that so large an item should have been in the hands of one individual. The continuous overdue condition of B.'s account, notwithstanding our repeated dunning and reminders, with B.'s promises of amendment, by early remittances, convinces us, as we have considered all along, that B. has been trading beyond the extent of his means, with ourselves, even if he had not been importing thro' some other sources, which we know he has.

181 It now becomes a matter of absolute necessity that every discretional exertion should be made, and at once, to place ourselves in the best position of security, so as to shield ourselves, not only from loss on B.'s open account, but also in the disposal of the goods now in bond and yet to ship; and, ad hominem, we would forcibly call your attention to the niggardly returns we have on such expensive goods, even under the most favorable circumstances, of prompt remittances and safe accounts.

We are, dear sirs, yours truly,

(Signed) NOVELLI & CO.

MAY 6, 1869.

Messrs. NOVELLI & CO., *New York:*

J. C. Bacheller.—Herewith please find B. L. and copy of shipping-

charges (£2 9*s*. 3*d*.) for 5 c. $^{J.\ C.\ B.}_{B.}$ 377–380 and 382, embraced in the invoice for £1,097 9*s*. 4*d*., forwarded by B'fd. in B. 106, to hold, in accordance with our previous instructions. J. C. B. has remitted £1,000 since our last.

We remain, dear sirs, yours truly,

NOVELLI & CO.

MAY 1ST, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—From whom we have not yet received any further communication since our No. 19 was transmitted for your especial guidance. We may note that Messrs. Geo. Warren & Co. and the Liverpool shippers have forwarded a B. L. in error, to J. C. Bacheller, but which they have since telegraphed to be returned. In making this admission to us they also write: "We were shipping other goods of same mark per China, and, in error, consigned them all to J. C. B., to whom we sent your B. L." Herewith please find a duplicate B. L. for $^{J.\ C.\ B.}_{B.}$ 340–376, 7 c., and copy of shipping-charges for £3 9*s*. 11*d*. The invoice was forwarded by B'f'd, with B. 105. The above extract shows that J. C. B. is importing goods through other sources, and consequently must have other outlets for his "short-dated notes." We have another in-
182 voice for £1,097 leaving our hands or B'f'd, possibly to-day. It is very evident that J. C. B. has more upon his hands than he can conveniently manage, hence every care and surveillance must be exercised in controlling his account. Please give this unremitting attention.

We are, dear sirs, yours truly,

(Signed) NOVELLI & CO.

APRIL 24, 1869.

Messrs. NOVELLI & Co., *New Yo'k:*

J. C. Bacheller has again addressed us from Lynn, dated the 9th inst., of which we now hand you a copy, and to which we will reply in a few days. The contents are greatly at variance with his letter of the 12th March, (of which we furnished you with a copy in our No. 14,) as also with your remarks in Nos. 16 and 18, as to his holding "notes of short dates, many of them just maturing, say $25 to $30,000."

On receipt of this we will thank you to go over to Boston and specially ascertain the position of his affairs, and the condition of his account with ourselves.

Should there still be an overdue balance, you will please use the following alternatives: to induce, request, or insist that he hands over to you, as collateral security, the notes, and such other documents of value you can by any means obtain, to be held by you in safe-keeping until such time as he can cover our overdue balance by remittances.

With B. 102, B'f'd put you in possession of the quantity of lasting we had to ship to complete his several orders. Since that time we have shipped 14 cases, leaving a balance of 41 c., or 1,640 p's, amounting in approximate value to over £5,000.

From J. C. B.'s letter herewith, we infer that the shoe-trade is quieter, and prices lower; but he is evidently in error in supposing any other house is offering Foster's wide "A" goods at lower prices, as no one but G. F. Breed has had the wider make, and we do not suppose any other manufacturer has made such goods.

However, a fall in prices having evidently taken place in Boston, seemingly, it now becomes an important question whether B. can
183 satisfactorily dispose of the whole of the goods already shipped,

together with those still in preparation. Your No. 18 states that you hold the invoice of March 19 for £860 12*s.* 0*d.*, leaving us to assume you had transferred to J. C. B. all you had previously received from us.

Inclusive of the amount above stated (£860 12*s.* 0*d.*) you will have received various invoices to 14th April, inst., showing a total of £3,409, 1*s.* 10*d.*, and charges, £10 8*s.* 6*d.*, now in your hands.

Please to ascertain at once if J. C. B. can dispose of the wide "A" goods now in preparation, not shipped; the execution of which will probably extend over two months from this date.

If he cannot, we are anxious to be informed as early as practicable, so that we can arrange, if possible, with Foster's to change the "A's" to the usual width "Standard" make of 26–27 in., instead of accumulating the wide, or 27–28 in., which, of course, would not be easily salable to other houses, at cost prices, we presume. To this end, we wish you to "cable" us if the "A" make is to be stopped.

This we do not ask so much as a convenience to Bacheller, but as a partial security to ourselves hereafter, as we consider the position of J. C. B.'s affairs is not, in a commercial point of view, satisfactory.

J. C. B. says he has $40,000 to collect. We presume this means notes in hand, and open account; $50,000 real property, and say he has $10,000 stock, making a summary of $100,000, currency. Against this, our account now culminates to £10,000, and goods to ship, now in preparation, of £5,000 or $35,000, making $105,000, or $5,000 over and above his supposed capital.

This, with his ordinary expenses going on, and doubtful trade, with small profits, if any, or, perhaps, loss, is not a comfortable prospect.

The above remarks, please take note, are, doubtless, assumptions; still there remains abundance of facts for your guidance.

In any case it is urgently necessary that prompt steps be taken to obtain all the security we possibly can, even to the documents relating to his real property, presuming such to be in existence, and of the reputed value, as per his letter.

We have no reason to suppose otherwise than that B., if he be
184 the honest man we conceive him to be, will at once place you in possession of all the collaterals he now possesses in your hands.

Be prompt and urgent, please.

Rem'g dear sirs, yours truly,
(Signed) NOVELLI & CO.

Enclose B. L. and charges. Copy of B.'s letter.
J. C. B. has remitted £208 11*s.* 6*d.* since our last.

APRIL 20, 1869.

Messrs. NOVELLI & CO., *New York:*

J. C. Bacheller.—C. 375–376, probably by the China. No advice yet to hand from Warren. We note the above for your guidance. Should any remarks arise hereafter, no delay rests on our part.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

APRIL 14, 1869.

Messrs. NOVELLI & CO., *New York:*

J. C. Bacheller.—We beg to draw your attention to the copy of his letter of the 12th March, enclosed in our No. 14. We have not yet received his promised remittance.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

APRIL 14, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We enclose herewith B. L., and copy of shipping-charges, £3 9*s.* 9*d.*, for 7 c. $^{J.\,C.\,B.}_{B.}$ 363–369; the invoice was transmitted by B'fd, with B. 103, to be held as previously noted. We have received a further remittance of £311 15*s.* 7*d.*

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

185 Enclo., B. L. and shipping-ch'gs.

J. C. Bacheller.—We find the invoice sent on the 10th inst. from B'fd represented only 6 c. We now enclose the one for $^{J.\,C.\,B.}_{B.}$ 369 in completion of the contents of the B. L. herewith.

APRIL 10, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—Herewith please find B. L. for 4 c. $^{J.\,C.\,B.}_{B.}$ 359–362; copy of shipping-charges, £1 19*s.* 4*d.*, and invoice of case 362, for £103 19*s.* 1*d.* The invoice for c. 359–361 was transmitted by B'fd, with B. 101; to be held in accordance with previous instructions.

Since our last, J. C. B. has remitted a total of £977 7*s.* 8*d.* This leaves an overdue balance of £1,294 6*s.* 3*d.*, besides interest upon our statement of 31st Dec., 1868, to say nothing of the amount which has accrued during the present year. We look for the fulfilment of his promise as per No. 16.

We are, dear sirs, yours truly,
(Signed) NOVELLI & CO.

APRIL 3, 1869.

Messrs. NOVELLI & Co., *New York:*

J. C. Bacheller.—We enclose B. L., and copy of shipping-charges for 3 c. lastings, $^{J.\,C.\,B.}_{B.}$ 356–358, of which the invoice was conveyed in B. 100, to hold as per our previous instructions. We also hand you copy of our letter of the 27th ultimo, to J. C. B., and copy of statement of account for your guidance, together with a copy of this letter of the 12th March, to which the above is our reply.

We are, dear sirs, your truly,
(Signed) NOVELLI & CO.

186 UNITED STATES OF AMERICA,
District of Massachusetts:

I, John G. Stetson, clerk of the circuit court of the United States for the first circuit and district of Massachusetts, certify that the foregoing as a true copy of the record, and of all proceedings, including the opinion in the cause of Jabez A. Sawyer et al., complainants and appellants, in equity, v. Edward Turpin et al., defendants and appellees, in this court, determined.

In testimony whereof I hereunto set my hand and affix the seal of said circuit court at Boston, in said district, this tenth day of October, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eighth.

[SEAL.] JOHN G. STETSON, *Clerk.*

187 *Bond to party on appeal.*

Know all men by these presents that we, Jabez A. Sawyer, of Cambridge, and Lyman B. Frazier, of Lynn, in the district of Massachusetts, as principals, and S. A. B. Abbott and Charles T. Lovering, of Boston, in said district, as sureties, are held and firmly bound unto Edward Turpin, in the State of New York; Augustus Henry Novelli, of London; Francis Koenig, of Bowden, near Manchester, and Charles Hardy Bowker, of Pendleton, near Manchester, and all of England, in the Kingdom of Great Brittain, in the full and just sum of one thousand dollars, to be paid to the said Turpin, Novelli, Koenig, and Bowker, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated the twenty-fifth day of April, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas lately at a circuit court of the United States for the first circuit, holden at Boston, within and for the district of Massachusetts, in a suit in equity depending in said court, between said Sawyer and Frazier, complainants, appellants, and said Turpin, Novelli, Koenig, and Bowker, defendant, appellees, decree was entered against the said appellants; and the said appellants having obtained an appeal to remove the said cause to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said appellees citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday of December next:

Now, the condition of the above obligation is such, that if the said appellants shall prosecute their said appeal to effect, and answer all damages and costs if *he* fail to make their plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

JABEZ A. SAWYER. [L. S.]
LYMAN B. FRAZIER. [L. S.]
S. A. B. ABBOTT. [L. S.]
CHA'S T. LOVERING. [L. S.]

Signed, sealed, and delivered in presence of—

Approved:

GEORGE F. SHEPLEY,
Circuit Judge.

A true copy of the bond taken by the judge at the time of allowing the appeal named in said bond, which bond is on file in the office of the clerk of the circuit court of the United States for the first circuit and district of Massachusetts.

Attest:

JOHN G. STETSON,
Clerk U. S. C. C., Mass. Dist.

(Indorsement on cover:) No. 252. Jabez A. Sawyer, Lyman B. Frazier, appellants, vs. Edward Turpin, Augustus Henry Novelli, Francis Koenig, & Hardy Bowker. Massachusetts C. C. U. S. Filed 14th October, 1873.

Supreme Court of the United States.

No. 252.

Jabez A. Sawyer & Lyman B. Frazier,

APPELLANTS,

vs.

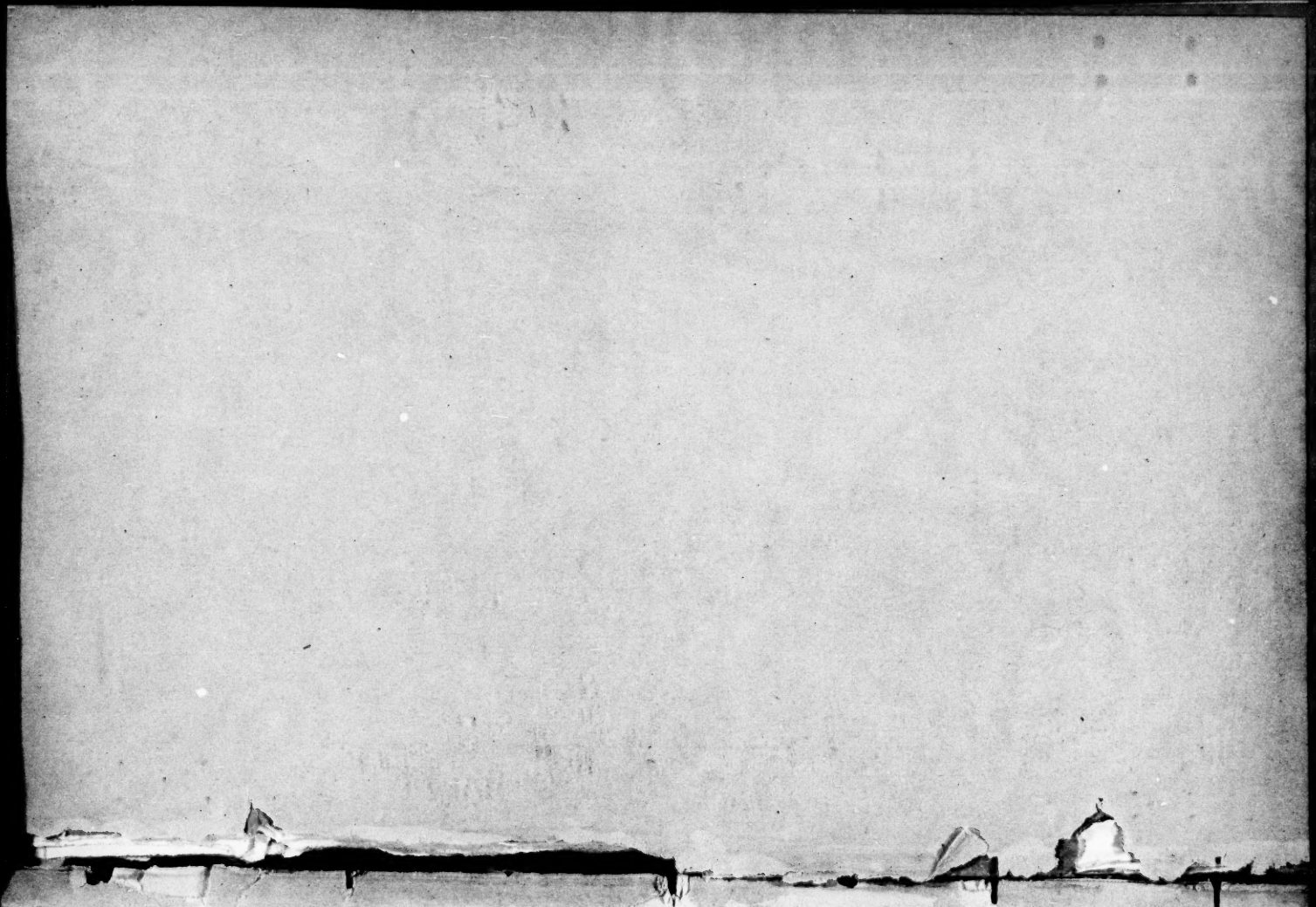
Edward Turpin, Augustus Henry Novelli, Francis Koenig & Hardy Bowker,

APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF OF THE APPELLANTS.

BOSTON:
PRESS OF ROCKWELL AND CHURCHILL,
No. 39 ARCH STREET.
1875



Supreme Court of the United States.

No. 252.

JABEZ A. SAWYER ET AL., ASSIGNEES AND APPELLANTS,

vs.

EDWARD TURPIN ET ALS., APPELLEES.

BRIEF FOR THE APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the Circuit Court for the district of Massachusetts.

It is a bill in equity, commenced originally in the United States District Court for the District of Massachusetts, Jan. 1, 1870.

The plaintiffs are assignees of J. C. Bacheller, a bankrupt, and the defendants are the managing agent, Turpin, residing in this country, of an English business house, and Novelli & Co., residing in Manchester, England, creditors of the bankrupt Bacheller.

The object and prayer of the bill is to set aside as fraudulent against the bankrupt act two conveyances made by the bankrupt Bacheller to Turpin, one of the defendants, to hold as security for the bankrupt's indebtment to Novelli & Co., the other defendants.

Record, pp. 2, 3.

The first conveyance is a mortgage of real estate, dated July 27, 1869, and recorded September 16, 1869.

Record, pp. 3, 4.

The second conveyance is a chattel mortgage of buildings erected on leased land, dated July 31, 1869, and recorded September 17, 1869.

Record, pp. 5, 6.

Another mortgage, dated July 31, 1869, was also claimed in the bill to be fraudulent (Record, p. 4), but, it having been agreed that the bankrupt had no title to the estate conveyed, no question arises in reference to it.

The bill claims that the two mortgages were given to the defendant as security for a large debt due to Novelli & Co.; that the mortgagor was insolvent when giving them; that the defendants knew of his being insolvent, and that they were given and received as fraudulent preferences.

Record, p. 3.

The answers admit receiving said mortgages; admit they were given as security for a large debt due from the bankrupt, viz., $27,839 in gold, but deny any knowledge of the mortgagor's insolvency, or any fraudulent preference.

The answers also allege that the bankrupt, on the 15th of May, 1869, conveyed the real estate described in the mortgage of July 31, 1869 (to which it is now agreed he had no title), and the property described in the chattel mortgage of the same date, to Turpin, as security for the debt to Novelli & Co., which conveyances were given up July 31, 1869, and the mortgages before described given in their place.

It is not claimed or proved that these conveyances of May 15, 1869, were ever recorded.

The conveyance of the buildings on leased land, of May 15, was not a mortgage in form, but an absolute bill of sale, with no condition; so, also, the deed of May 15, of the real estate, was not a mortgage, but an absolute deed.

Turpin's testimony, Record, p. 44.
Patch's testimony, Record, p. 25.

The petition on which Bacheller was declared bankrupt is admitted in the answer to be October 22, 1869.

Record, p. 13.

On petition to the District Court of Massachusetts, of the plaintiffs, assignees of Bacheller, the defendants consenting, the plain-

tiffs were ordered to sell the real estate and buildings on leased land, the subject of the controversy, and hold the proceeds subject to the order of the Court.

Record, p. 7.

So that the prayer and object of the bill is to have the proceeds of said sale decreed to be paid to the plaintiffs as assignees.

Upon the hearing before the District Court on the bill, answer and evidence, the Court decreed that the plaintiffs should retain, as assets of the bankrupt, the proceeds of the estate mortgaged to the defendants July 27, 1869, and that the defendants should have paid to them the proceeds of the buildings on leased land, mortgaged to them July 31, 1869.

Sawyer et al. *vs.* Turpin et als., 5 Nat. Bk. Reg. 339.

From this decree, ordering said proceeds paid to the defendants, the plaintiffs appealed to the Circuit Court of the United States for the District of Massachusetts.

Record, p. 15.

The defendants did not appeal from the decree ordering the proceeds of the realty to be retained by the plaintiffs.

Record, p. 15.

The Circuit Court affirmed the decree of the District Court.
From this decree the plaintiffs appealed to this Court.
The defendant did not appeal.

Record, p. 17.

Claim of the plaintiffs upon the appeal.

The contention between the parties is whether the chattel mortgage of July 31, 1869, given by the bankrupt Bachellar to the defendant Turpin, is void as against the assignees, as being a fraudulent preference of a creditor under the bankrupt act.

The plaintiffs claim it to be a fraudulent preference, and so void; the defendants allege that it is not a fraudulent preference, and so valid.

The plaintiffs claim that the judgment of the District and Circuit Court, in reference to a transaction distinct from, and having no connection with, the one upon which the judgment is against them, viz., the mortgage of the real estate of July 27, 1869, not having been appealed from by the defendants, stands, and is not drawn in question before this Court.

Brief of the Appellants.

I.

The questions raised in this case upon the bill, answer and proofs, are these: —

1st. Was the bankrupt Bacheller insolvent at the time of giving the mortgages in question, July 27th and 31st, 1869?

2d. Was this insolvency known to the bankrupt, and had the defendants reasonable cause to know it?

3d. Were the mortgages given as fraudulent preferences by the bankrupt, and received as such by his creditors, the defendants?

In considering this matter, at the outset, we find that the questions of fact have been found all in favor of the plaintiffs, upon a full hearing and argument, first by the District Judge, and second by the Circuit Judge.

That is, both Courts have found that, on the 27th of July, 1869, Bacheller, the bankrupt, was insolvent; that he made the mortgage of the realty of that date to the defendants; and that it was received by the latter, under such circumstances that it was a fraudulent preference of pre-existing creditors, and must be declared void in favor of the plaintiffs, the assignees.

The mortgage of the chattels, viz.: the buildings on leased land, was made three days later, and all facts bearing upon the mortgage of July 27th, upon which it was declared void, apply with equal force to the mortgage of July 31st.

The reason for declaring the latter mortgage valid will be considered subsequently.

And upon a consideration of the undisputed facts, and evidence mainly of the acts and correspondence of the defendants, there can

be no doubt of the justice and right of the findings by the District and Circuit Courts.

No question can be made that Bacheller was deeply insolvent when the mortgages in question were made. Indeed, no attempt is made to prove the contrary by the defendants. No especial change took place in his circumstances for the six months before his bankruptcy, October 22, 1869.

Frazier's testimony, Rec., pp. 32–3.
Patch's " " " 36.

Indeed, the debts due to the defendants at that time and to Turner & Co. amounted to more than $30,000, much more than sufficient to make him insolvent.

Turpin's testimony, Rec., p. 48.
Greey's " " " 36.

The only real question is, had the defendants reasonable cause to believe Bacheller to be insolvent?

If the agent, Turpin, had such reasonable cause, it would bind Novelli & Co., the other defendants, his principals; and of course if the principals have such reasonable cause, there could be no question as to the agent.

But here fortunately, upon the proofs, it is as clearly proved as any question of such a nature can be proved, that both principals and agent, all the defendants, not only had reasonable cause to believe in Bacheller's insolvency, but did in fact know, and actually believed it long before the mortgages in question were given, certainly before the first deeds were given in May.

In the first place, long before May, 1869, there was a large overdue debt from Bacheller to the defendants, overdue for a long time, and for payment of which the defendants had pressed with great vigor, and urged the giving of security.

To these urgent demands of the defendants, constant excuses had been made by the debtor for not paying these overdue debts.

So far did this go, that as early as April, 24 1869, Novelli & Co., writing to their agent, Turpin, say that, according to his own showing, Bacheller had not enough to pay his debts by $5,000.

Rec., p. 112–13, Letter of Novelli & Co. to Turpin.

Take all the letters of Turpin to the bankrupt Bacheller, and from Novelli & Co. to their agent Turpin, beginning as early as March, 1869, every one of them shows that they did not believe in the debtor's solvency.

Exhibits 101–3–18–19–20–21–22–23–24–25–26–27–28–29–30–31–32–33–34–35, contained in Record, pages 91 to 98.
Novelli's correspondence with Turpin, Record, pages 107 to 112.

This large indebtment had been overdue from as early as January 1, 1869, as appears by the correspondence referred to, and in reference to it great anxiety is expressed by the defendants, and security asked for.

Now, at the threshold of the inquiry, you meet this fact, established so that no question can be made about it, — from January, 1869, down to the giving the mortgages in question, the debtor was owing a large debt, which he was utterly unable to meet as it became due. This is established by the correspondence referred to.

And this was not only true of the defendants' debts, but was equally true of another large debt to Turner & Co. of $4,500, which became due in March and April, 1869, and was never paid.

Greey's testimony, Rec., p. 37.

This fact alone would be quite sufficient, dealing with a trader; if a merchant takes security for his debt, when he knows his debtor has long been unable to meet his payments as they become due, indeed takes security, because of such inability to pay his debts as they become due, the creditor does it clearly at the risk of its being avoided in case of bankruptcy by the assignee.

The debtor was legally bankrupt; he was unable to pay his debts, contracted in his business as a trader, as they became due and payable; and such inability, in case of a merchant or trader, is legal bankruptcy, upon both authority and principle, — bankruptcy upon which the debtor might, upon the petition of a creditor, have been declared a bankrupt.

Thompson *vs.* Thompson, 4 Cush. (Mass.), 127.
Lee *vs.* Kilburn, 3 Gray (Mass.), 594 and the authorities there cited.

The defendants were, then, long before taking the mortgages in question (July 27 and 31, 1869), acting not only with reason to believe their debtor insolvent, but with full, positive knowledge of his being bankrupt in the eye of the law.

If, under such circumstances, they choose to take security, they must take it at the risk of its avoidance in behalf of all the creditors in bankruptcy.

It will not do for them to say, to be sure, we knew of our debtor's embarrassment; we knew he did not meet his commercial paper as it became due; still we believed him solvent; it is sufficient they did not *act on the belief in his solvency;* on the contrary, *they acted so as to protect themselves against his insolvency*, and so prevented property from passing to the assignee for the benefit of the unsecured creditors. To hold this security valid, would be a great injustice to the latter.

But aside from, and in addition to, the fact of the debtor being confessedly unable to pay his commercial debts as they became due, that is, of his legal bankruptcy, all the facts, circumstances and testimony in the case shows, beyond all peradventure, that the defendants not only had reasonable cause to believe, but did actually believe and act on the belief, that their debtor was actually insolvent and unable to pay his debts long before the giving the mortgages in question.

1st. There was the fact of a very large debt to themselves, overdue since January 1, 1869, and about which they were taking every means to get payment or security.

Correspondence of defts., Record, pages 91 to 101 and 107 to 114.

2d. The fact that, in May, 1869, when they could not get their debt reduced in any way, they insisted on and took security of their debtor upon his real estate and buildings, to hold as collateral for their general balance, is very significant. In dealing between merchants or traders, if the creditor suddenly requires collateral security for his debt upon the real estate of his debtor, it is an act out of the ordinary course of business, and is of itself *prima facie* fraudulent by the terms of the bankrupt act itself. But aside from this provision of the bankrupt act, the taking such security under such cir-

cumstances establishes the fact conclusively that they believed, and acted on it, that the debtor was unsafe; that it would not do to trust him as they had done; that they must have security, — something more than his credit and ability alone, — a security that would put them in a position different from, and more favorable than, that of other creditors; and this security was attempted to be obtained and given as early as May 15, 1869.

Patch's testimony, Rec., pages 25, 26.
Turpin's " " " 49, 50, 51.

3d. But this taking security on real estate as early as May 15, 1869, by no means stands alone. It is but one act connected with others conclusively showing that the defendants believed their debtor unsafe, unable to pay his debts, — insolvent in fact.

At the same time they took this security on real estate, as a part of the transaction, and something giving much more weight and significance to the taking security than that act would have been entitled to standing alone, the defendants required all merchandise shipped to their debtor to be immediately transferred to their agent here, before it was taken out of the Custom House, and that their agent should deliver none except on payment of the price of it. In dealings between merchant and merchant, or trader and trader, such acts on the part of the creditors show not only distrust of the credit of their debtor, but more, that all confidence in his ability to meet his engagements has vanished; indeed, taking the two acts connected together, the creditors could have declared in no clearer and better way their absolute disbelief in their debtor's solvency and ability to pay his debts. This arrangement is testified to by both the defendant Turpin, and Patch, the debtor's agent.

Patch's testimony, Rec., p. 24.
Turpin's " " p. 44.

This conduct on the part of the defendants is capable of no explanation, except this, that they knew, certainly enough to act on their knowledge, that their debtor was insolvent, and determined to secure themselves for their debt at all hazards. Indeed, the deposi-

tions of the principal defendants, Novelli & Co., consisting of Novelli, Bowker and Koenig, are conclusive against them upon this point.

They say, in substance, that since March, 1869, their debtor had let moneys owing them get considerably in arrears; that they thought by this that he was trading beyond his capital, he being, as they had been informed, engaged in large transactions with other houses, and also largely engaged in speculating in gold.

Defendants' testimony, Rec., pages 103 and 105.

To be sure the defendants add, that they believed that the debtor would *ultimately* pay all his debts, which is both immaterial and incompetent.

Forbes *vs.* Howe, 102 Mass., 427.

Now, taking these facts alone, if security can be taken by the creditors for a largely overdue debt from a trader, a commercial business debt, contracted in the course and conduct of his trade, then the provisions of the bankrupt act against fraudulent preferences are utterly useless, a dead letter in fact; and security can always be taken and sustained by claiming that the creditors, although they were unwilling to go on without security, did believe that in some way or other the debtor would be able ultimately to pay his debts.

In this case, it is entirely clear that the creditors would not act on the belief in the debtor's ability ultimately to pay his debts, for they required security for their own debt; that is, they were quite willing that other creditors should take the risk of the debtor's ultimate ability to pay, but they declined themselves to take any such risk.

There was also added to the other facts an element of secrecy. An agreement was made that the transaction should be kept secret; the first deeds of May 15, 1869, although received by Turpin in the first week in June, were never recorded by him, and on the last of July he exchanged them for the mortgages in question, which were not recorded till into September.

Patch, Rec., p. 26.

4th. By a careful examination of the correspondence of the defendant Turpin with the debtor Bacheller, and that between Novelli & Co. and their agent Turpin, it is clear that all the defendants believed in the debtor's insolvency long before the mortgages in question were given.

Record, pages 93 to 103. Exhibits from 118 to 145, and Record, pages 107 to 113.

Thus, by letter of May 1, 1869 (Exhibit 122, Rec., p. 94), Turpin urges payment of the debt in the strongest terms, expressing great surprise and dissatisfaction at the long delay; by letter of May 26 (Exhibit 127, Rec., p. 96), after giving of the first security, he permits sales of goods, given him as security, for cash, to be forthwith remitted, and also speaks of reports current that he had taken security, which he denies came from him, thus recognizing and acting on the agreement to keep the giving of security secret.

June 12, 1869 (Exhibit 130, Rec., p. 97), he says *his instructions are such that he must have more security, or hold the goods till the account is reduced.*

August 16, 1869 (Exhibit 143, Rec., p. 100), he says Patch, the debtor's book-keeper, agreed to meet him and give him a statement of the debtor's affairs, and that he did not do it. Sept. 18, 1869 (Exhibit 145, Rec., p. 101), he says Patch agreed to record the mortgages a month before that time, which would be several weeks after they were given, thus admitting the agreement not to record and keep them secret.

The letters of Novelli & Co., the principals, to the agent Turpin mainly, are still stronger; thus: —

April 24, 1869 (Rec., p. 112, 113), they direct Turpin "*to insist upon all the security he can get*, as they do not consider Bacheller's affairs commercially in a satisfactory position." They go into the examination of his affairs at length, and say *that, according to his own account, his property falls $5,000 below his debt to them.* May 1, 1869 (Rec., p. 112), they write that they have discovered that Bacheller is dealing with others, and "*that he has more on his*

hands than he can manage." May 8, 1869 (Rec., p. 111), they say Bacheller has traded with them "*beyond his means*," besides trading with others, and demand that their agent shall make every exertion to obtain the most security, so as to shield them from loss. May 29, 1869 (Rec., p. 110), they direct their agent to hold the deeds, not only for the overdue balance, but also for goods in bond, and urge the getting security against ultimate loss. June 5, 1869 (Rec., p. 110), they say Bacheller has not been fair and open in his statements, speak of his gold speculations, and ask for the greatest circumspection in their agent "to pilot them to a safe termination." June 10, 1869 (Rec., p. 109), they say "they ought to have tangible security, instead of the deeds." June 26, 1869 (Rec., p. 109), they express great discouragement as to Bacheller's debt, hope they may get off without loss; speak of his speculating, neglecting his business, and direct the agent "*to get all the security he can.*" Aug. 21, 1869 (Rec., p. 108), they say Bacheller's affairs are in a bad way, direct the getting of all possible security, and speak of his speculating propensity.

Indeed, all the letters of the principals, Novelli & Co., to their agent, Turpin, are based on the belief, amounting almost to certain knowledge, that Bacheller is unsound and insolvent, and that they must have security to save themselves.

Take, therefore, all the testimony, — and it comes almost entirely from the defendants' own acts and correspondence, — there can be no doubt that the conclusion of both the district and circuit judges was right, that the mortgage of July 27, 1869, was a fraudulent preference, and that, of course, four days later, on the 31st of the same month, when the mortgage was given on the buildings, the defendants had the same knowledge that their debtor was insolvent and unable to pay his debts, and that it must be void, unless sustained upon other and independent grounds.

II.

We propose now to consider the claim made, which applies only to the mortgage of the buildings on leased land, as chattels, — that it

was given in exchange for an absolute bill of sale of the same property sent to the defendant Turpin, by mail, May 17, 1869, received June 9, 1869, and so, that the defendants can hold for that reason.

The mortgage of July 27, 1869, found to be invalid by the district and circuit judges, was given for the first time at its date, and not in exchange for any absolute deed given in May, as with the two mortgages of July 31.

It appears by the testimony of both the defendants, Turpin and Patch, that Bacheller made an absolute conveyance of the buildings on leased land and another lot of land, the title to which failed subsequently, and about which it is not necessary to inquire, for that reason, on the 15th of May, 1869, and sent it by mail to Turpin, in New York, but that it was not received till the first week in June.

Rec., pages 25–26–44–49–50.

The ground on which the District and Circuit Courts decided that the proceeds of the property conveyed by the mortgage of July 31 should be paid to the defendants, while the proceeds of the property mortgaged July 27th should be paid to the plaintiffs, was that the July 31st mortgage was given in exchange for an absolute conveyance of the property made May 15, and delivered in June, more than four months before bankruptcy, while the mortgage of July 27th was delivered for the first time at its date, and not in exchange for any former conveyance.

As we have seen, both Courts found Bacheller insolvent on the 27th of July, that the defendants knew it, or had reason to do so, and that it was a fraudulent preference. With this finding, the plaintiffs find no fault, and have not appealed from it.

But the finding of those Courts, that the defendants' title to the proceeds of the chattels mortgaged July 31 should be sustained because it was taken in exchange for an absolute bill of sale of the same property made May 15th, as collateral security for the same debt, cannot be sustained.

1st. The defendants cannot claim under the absolute conveyance of May 15th, because it is admitted by them that it was given up and surrendered. That conveyance is admitted, although absolute

on its face, to have been given and taken as collateral security for the grantor's indebtment to the grantees, so that when it was given up and another form of security taken in its place, no claim could ever afterwards be made upon that which had been given up. The grantees' rights must be determined by the facts as they existed July 31, when they took the only conveyance under which they now claim.

Take precisely the facts as they are admitted to exist, and how does the case stand? Thus:—

The grantees take the mortgage under which they claim, as collateral security for a pre-existing debt due from the mortgagor; at the time they took it the mortgagor was insolvent, and they knew it. The case comes exactly within the provisions of the bankrupt act, avoiding such transactions as fraudulent, and it is entirely immaterial that a prior conveyance of the same property was given up.

2d. The prior conveyance of May 15th, as against creditors, or the plaintiffs, representing creditors, and having all their rights, was null and void. It is admitted to have been given as collateral security for a debt. No possession of the mortgage chattels was ever given or taken under it, and it was never recorded. Indeed, being absolute on its face, it is doubtful if anything but possession taken and retained would have made it valid.

By the laws of Massachusetts, regulating the contract, this absolute bill of sale given by the bankrupt to the defendants was absolutely void as against creditors, or the representative of creditors, there having been no delivery, or possession taken and retained.

The General Statutes of Massachusetts provide, Chap. 151, Sect. 1, that a mortgage of personal property, unless recorded, or unless possession is taken and retained, shall be void as against *all persons* but the parties thereto. The Massachusetts statutes are as follows:—

"SECT. 1. Mortgages of personal property shall be recorded on the records of the city or town where the mortgagor resides, when the mortgage is made, and on the records of the city or town in which he then principally transacts his business, or follows his trade or calling. If the mortgagor resides without the State, his mortgage of personal property within the State, when the mortgage is made, shall be recorded on the records of the city or town where the

property then is. Unless a mortgage is so recorded, or the property mortgaged is delivered to and retained by the mortgagee, it shall not be valid against any person other than the parties thereto, except as is provided in the following section: —

"SECT. 2. Such record shall not be necessary to the validity of a mortgage, contract of bottomry, or respondentia, or any transfer, assignment or hypothecation of a ship or vessel. Nor shall a record be necessary to the validity of any transfer in mortgage of goods at sea or abroad, if the mortgagee takes possession of such goods as soon as may be after their arrival in this State."

In this case, nothing but possession taken and retained would be effectual; the conveyance being absolute on its face, and not a mortgage, recording would be useless, and convey no information.

The bankrupt act itself substantially provides that a mortgage, to be valid against assignees, must be recorded according to the laws of the State where it is made. In stating the office and power of the assignment, it is provided that no mortgage of any goods or chattels made as security in good faith and for present considerations, and otherwise valid and duly recorded, pursuant to any statute of the United States or of any State, shall be invalidated by the assignment.

Bankrupt Act, Sect. 14, prov. 2.

The bill of sale of May 15, then, having been given as collatera security, and no possession having been taken under it before it was surrendered, never became operative, never passed any title to the property, the giving up of which can be made a consideration for the mortgage of July 31. No title passed by it; no lien was created by it; and while in this condition, while it was inchoate, before it ever became operative, it was given up.

It was not the case of a sale which sometime, when so intended, may be perfect as between the parties without delivery.

Here no sale was intended; no delivery was intended; the instrument was only intended as security for a debt, not to make an absolute sale of the property; so that even between the parties no title had passed before it was surrendered.

Nor can it be claimed that the mortgage of July 31 should be upheld because an agreement to give security was made May 15, which was partially carried out and then given up, and the mortgage of July 31 given. It has been repeatedly held, in reference to questions of bankruptcy and insolvency, that the validity of any instrument claimed under against an assignee must be determined by the state of facts existing at the time of its execution.

Forbes *vs.* Howe, 162 Mass., 427.
Blodgett *vs.* Hildreth, 11 Cush., 311.
Paul *vs.* Waite, 11 Gray, 190.
Simpson *vs.* Carlton, 1 Allen, 109.
Denny *vs.* Same, 2 Cush., 160.

Now, upon the agreed facts, taking the bill of sale at its best, it never was in a condition where it could be set up as a valid claim against the assignee, because it neither was recorded, nor possession taken under it, or retained. Certainly, no instrument can be set up against an assignee, which cannot be set up against creditors. The assignee takes the place of the creditors, has and enforces their rights. It would be a strange result if a conveyance which was absolutely void as against each and every creditor should be valid against the assignee who represents each and every one of them.

Every conveyance by a bankrupt, which by the laws of the State where it is made is void against creditors, is also void against the assignee in bankrupcy.

Allen *vs.* Massey, 17 Wall, 357.
Bank of Leavenworth *vs.* Hunt, 11 Wall, 391.
Kane, Assignee, *vs.* Rice, Nat. Bank Reg., Vol. 10, p. 469, Mich.
Edmondson *vs.* Hyde, Nat. Bank Reg., Vol. 7, p. 1, Cal.
Thornhill *vs.* Link, Nat. Bank, Reg., Vol. 8, p. 521.
In re Wynne, Nat. Bank Reg., Vol. 4, p. 5, Chase, C. J.

The assignee takes what any creditor could take, otherwise the creditors would lose instead of gain by the bankrupt act.

The bankruptcy here was Oct. 22d, 1869; the bill of sale in question was never recorded, or possession taken under it, before it was surrendered July 31st. The four months preceding bankruptcy ex-

tended back to June 22d; therefore, taking possession or recording after that time would have been ineffectual against the assignee. As against him the instrument would only take effect from its record or possession taken under it, and not relate back to its date, before its existence was known to creditors. Some of the cases cited above are directly in point: —

Kane *vs.* Rice, 10 Nat. B. R., 469.
Thornhill *vs.* Link, 7 Nat. B. R., 521.
In re Wynne, 4 Nat. B. R., p. 5.

Any other construction would, to a certain extent, nullify the act, and directly encourage fraudulent preferences. A mortgage could be given, kept secret as long as possible, the keeping it from the records keeping other creditors quiet, and so preventing the commencement of bankruptcy proceedings, until it is suddenly put on the records, and established against the other creditors, because it was given more than four months before bankruptcy, although recorded perhaps but a day before.

The four months must begin to run, not from an act kept secret, but from the time when it became known, either by taking possession or recording, which is constructive notice to the world.

But there is a stronger reason here, against permitting the bill of sale of May 15 being held sufficient to sustain the mortgage of July 31st.

Patch testifies that it was arranged between the defendant Turpin and himself, that as there had been adverse rumors in reference to Bachelier's credit, the giving of the deeds, May 15th, should be kept from all but the parties, the witness agreeing to record the deeds whenever Turpin sent them to him requesting it.

Patch's testimony, Rec., p. 26.

Turpin admits that he received the deeds before June 9th, but made no effort to have them recorded until July 31st, when they were given up, and the mortgages then taken were not recorded till Sept. 18th; thus showing he acted on the agreement testified to by Patch.

Turpin's testimony, Rec., p. 50.

Again, Turpin, in his letter of May 26th (Ex. 127, Rec., p. 96), speaks of *reports current that he had taken security, which he denies came from him.* Nothing could more strongly prove the agreement testified to by Patch, thus recognized by Turpin, the other party to it.

You have, then, the deed of May 15th, to be kept secret, not to be recorded, for no other purpose than deceiving other creditors as to the true condition of Bachellar. In fact these deeds never were made public, so that creditors could know of them; the using them for any purpose would be a fraud on other creditors.

Take this evidence all together, the agreement to keep secret and not record, the fair effect of it is this: the parties agreed to hold back the securities, keep them secret, to enable the debtor to go on with his business, get credit with and deceive other creditors, and this was done. The mortgages were recorded Sept. 18th, and within a month the debtor was in bankruptcy. If the deeds of May 15th had been made public by recording or taking possession under them, the debtor would have been forced into bankruptcy, as he subsequently was by recording the mortgages, and the creditors by their assignee could have avoided them as they would have been within the four months.

Now, clearly, the defendants, having by their own act prevented the other creditors from interfering through the bankrupt act, should be estopped from using those deeds for any purpose, so long as they were kept secret.

There is another view of this part of the case, which leads to the same result. The fair result of the evidence is, that the deeds were not to become operative till recorded, or possession taken, and that, if never so perfected, they never became operative contracts as between the parties. They were made, put into the hands of the defendant, with power at any time to enforce them by taking possession or recording; but till so used they were not to be binding.

This was clearly so as to the absolute bill of sale of the buildings on leased land, the only one with which we are now dealing. The property being personal, the bill of sale being given merely as collateral security, could not be operative until a delivery or pos-

session taken and retained. It was absolutely ineffectual as a contract until so perfected, which never took place. It seems clearly as to this instrument no claim can be founded on it, or on its surrender, because before it ever became of value, a binding contract, it was given up by mutual consent, so that it cannot be made a consideration for a new conveyance.

J. G. ABBOTT,
BENJAMIN DEAN, } *For the Plaintiffs.*

SUPPLEMENTAL BRIEF.

We have already seen that by the State Statute — except in certain cases specially enumerated — an unrecorded chattel-mortgage upon which possession is not taken and held gives no lien even against purchasers with full notice. See statute copied on 13th and 14 pages *ante*, and Train *vs.* Bishop, 13 Met., 304.

We have also seen that this Court has adopted the construction of the Statutes adopted by the State Courts, in Allen *vs.* Massey, 17 Wallace, 357; Bank of Leavenworth *vs.* Hunt, 11 Wallace, 391.

It may be claimed that Gibson *et al. vs.* Warden *et al.*, 14 Wallace, 244, is in conflict with this doctrine, but it is not so. On the contrary, it is an authority in support of it, for that *decision is expressly based upon the construction of the Ohio Statute by the Ohio State Courts.*

The decisions of the Massachusetts Supreme Judicial Court, on the contrary, declares such mortgages void even against purchasers with notice.

Besides, the language of the two statutes is widely different. The Ohio Statute declares such mortgages void only against creditors and purchasers, and mortgagees in good faith, and therefore the mortgage creates a lien to be dislodged by proof *in pais*, and the Court says the assignee is not of the three classes named. The Massachusetts Statute, on the other hand, declares such mortgages void "against any person other than the parties thereto." And the assignee is such person.

The case of Gibson *vs.* Warden has been discussed at length in Edmondson *vs.* Hyde, by Sawyer J., 7 N. B. R., 1, in which a mortgage, contrary to the Statute of California, is declared void as

against an assignee in bankruptcy, and in which the learned Judge construes Gibson *vs.* Warden as based upon the decisions of the Ohio State Courts.

Until the mortgage is recorded or possession taken, the mortgagee is in no better condition than any other creditor; for any other creditor with full notice could take the property by attachment, purchase, or pledge.

It has been expressly decided in Massachusetts that "an unrecorded mortgage of personal property, which is not delivered to and retained by the mortgagee, is not valid against the assignee in insolvency of the mortgagor."

Bingham *vs.* Jordan, 1 Allen, 373.

In this case Judge Hoar says, "The single question which the case presents is, whether the assignee in insolvency of the mortgagor of personal property, where the mortgage is not recorded according to law, and the possession of the property was retained by the mortgagors until the insolvency, is to be regarded as a 'party' to the mortgage, so as to come within the exception of the statute which provides that such mortgages 'shall not be valid against any persons other than the parties thereto.' Gen. Sts. c. 151, s. 1. We are of opinion that he cannot be so regarded, and that the ruling of the Court at the trial was right."

Chief Justice Chase expresses the same opinion *in re* Wynne, *ubi supra*.

Therefore, that which gave the appellees a title took place within the four months.

In this view of the case it is immaterial to raise any distinctions between a bill of sale and a mortgage. The result would be the same in any event.

J. G. ABBOTT,
BENJ. DEAN.

Supreme Court of the United States,

No. 252.

IN EQUITY.

JABEZ A. SAWYER ET AL.,

COMPLAINANTS AND APPELLANTS,

VS.

EDWARD TURPIN ET ALS.,

RESPONDENTS AND APPELLEES.

BRIEF ON BEHALF OF APPELLEES.

JOSHUA D. BALL, *for Appellees.*

BOSTON:
HOLLIS & GUNN, PRINTERS, 31 HAWLEY STREET.
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APPELLEES' BRIEF.

THIS is a bill in equity, brought by Jabez A. Sawyer and Lyman B. Frazier, the assignees of Jeremiah C. Bacheller, of Lynn, a bankrupt, to set aside certain mortgages to Edward Turpin upon real estate on Atlantic Street, on Bacheller Street, and on a frame building, all in Lynn. Mr. Turpin was the agent of Novelli & Co., a firm doing business in Manchester, Bradford, and elsewhere in England, composed of Augustus H. Novelli, of London, Charles Hardy Bowker, and Francis Koenig, both of Manchester, and acted for that firm in all the transactions in question in this case.

The real estate and frame building, except the Bacheller Street property, have been sold by the assignees upon the agreement that they will hold the proceeds to await the result of the suit.

The real estate on Atlantic Street was mortgaged to Turpin, by mortgage dated July 27, 1869, to secure $5,000 in one year, subject to a prior mortgage thereon of $5,500. This mortgage to Turpin was delivered on July 28, 1869, and was recorded Sept. 15, 1869. The Bacheller Street real estate was mortgaged to Turpin for $2,000 in one year, by mortgage dated July 31, 1869, and recorded Sept. 15, 1869. The frame building was mortgaged to Turpin for $8,000 in one year, by mortgage dated July 31, 1869, and recorded Sept. 17, 1869. These two mortgages were delivered in Lynn to Turpin, on the day of their dates. For mortgages and notes

Vide Exhibits 4, 7, 5, 9, 6, 8. pp. 2 to 12. 78, 79.

No title to the Bacheller Street property was in fact conveyed to Turpin, Bacheller having no title to it, as his grantor was Mrs. Sophronia S. Speed, a married woman, and her husband did not join in the deed, or assent to it in writing.

Exhibit p. 18. Frazier, Ans. 7, p. 33.
Turpin, Ans. 90, p. 52.
Gen. Stat. of Mass., chap. 108, sec. 3.

And any further consideration of that piece of property may be omitted.

The mortgage on the frame building, dated July 31, 1869, was given on that day in substitution for a deed of the same property, which deed was delivered before June 9, 1869, more than four months before the filing of the petition in bankruptcy. This mortgage the District Court held to be valid. The mortgage of July 27, 1869, was delivered in New York July 28, 1869, but was not in substitution for any other security, and the District Court held it to be invalid.

The mortgages Turpin received as collateral security for Bacheller's indebtedness to Novelli & Co.

October 22, 1869, Bacheller filed a voluntary petition in bankruptcy, and on October 29, 1869, was adjudged a bankrupt.

The assignees seek to set aside the mortgages on the ground of preference.

The appellees deny that there was any preference.

The bankrupt law provides "that if any person being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this Act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited."

U. S. Bankrupt law, sec. 35.

The mortgage which the District Court held to be valid was a mortgage on personal property, being of a building on land leased to Bacheller, and the mortgage was given in substitution for a deed of precisely the same property. It was not even a change of the *kind of security*, for the mortgage was on the same property, and

the original deed which was given up and for which the mortgage was substituted, was received more than *four months* before the filing of the petition in bankruptcy, having been received before June 9, 1869, (see pages 9 to 11 inclusive of this brief and the citations).

An exchange of security, even after the debtor is known to be insolvent, is perfectly valid if the creditor by the exchange receives no more in value than he gives up.

Stevens *vs.* Blanchard, 3 Cushing, 169.

The validity of the mortgage depends not upon the state of facts existing at its date, but as it was exchanged for another form of security on the same property, its validity will be upheld because the security for which it was in exchange was valid and made and delivered more than four months before proceedings in bankruptcy were commenced.

Stevens *vs.* Blanchard, cited above.
Winsor *vs.* McLellan, 2 Story, 495, 500.

The deed which was given up might have been recorded by Turpin at any moment. He might have taken possession at any moment of the property conveyed by it. He had it in his power at any moment to exercise full and absolute control over and possession of the property.

But it is said that before the exchange no possession had been taken of the building under the deed, and that it had not been recorded.

The answer to this is,—

1. That such a deed as between the parties was valid without possession or record.

General Statutes of Mass., chap. 151, sec. 1.

2. No rights of creditors had intervened when the exchange took place.

3. That giving up the deed was a sufficient consideration for the mortgage.

4. That even if never recorded and never exchanged for the mortgage, and if no possession had been taken, the deed being valid as against Bacheller would have been valid as against his assignees in bankruptcy, (although it is submitted that this proposition is not material to be discussed, as the mortgage was duly recorded after it was taken). But the proposition is entirely tenable.

(*a*). Assignees in bankruptcy take, except in cases of fraud only, the rights of the bankrupt and subject to all the equities and incumbrances which exist against the bankrupt; and an unrecorded mortgage of chattels being valid as against the bankrupt is valid as against his assignees.

In re J. Dow, Shepley J., 6 N. B. R., p. 11.
In re Griffiths, Lowell J., 3 do., p. 179.
Sawyer *vs.* Turpin, Lowell J., 5 do., pp. 339, 346.
Winslow *vs.* McLellan, 2 Story, 495, 500.
Mitchell *vs.* Winslow, *ibid*, 630.
Fletcher *vs.* Morey, *ibid*, 555. Ex parte Newhall, *ibid*, 363.
Fiske *vs.* Hunt, *ibid*, 584. Parker *vs.* Muggridge, *ibid*, 334.

But it will be said that the case of Bank of Leavenworth *vs.* Hunt, 11 Wallace, 391, is in conflict with this doctrine. It is submitted that it is not. That case was decided on the peculiar language of the laws of Kansas, and on the ground that the mortgage was fraudulent. See also the comments of Judge Shepley and Judge Lowell on that decision.

In re Dow. Sawyer *vs.* Turpin, cited ante.

It will also be said that the case of Bingham *vs.* Jordan & al., 1 Allen, 373, holds an unrecorded mortgage to be invalid against assignees, under the insolvent laws of Massachusetts. That case was decided solely on the ground of the peculiar phraseology of the insolvent laws of Massachusetts. That law provided that the assignment to the assignee shall vest "in the assignee all property of the debtor, real and personal, which he could have lawfully sold, assigned or conveyed, or which *might have been taken on execution upon a judgment against him at the time of the first publication of the notice of issuing the warrant.*"

Gen. Stat. of Mass., ch. 118, sec. 44.
Mass. Stat. 1838, ch. 163, sec. 5.

As property covered by an unrecorded mortgage could be taken upon an execution against the mortgagor, *by the very language of this act* it passed to the assignee.

But neither the bankrupt law of 1867 or 1841 contains any such language or equivalent language.

14 Stat. at Large, ch. 176. sec. 14, p. 522.
5 " " ch. 9, secs. 2 and 3, pp. 442, 443.

The laws of 1867 and 1841 are substantially the same, as to the operative effect of the assignment.

The language of the provisos in the 14th section of the bankrupt law of 1867 do not *enlarge* the term of the preceding parts of the same section.

In re Dow, } cited ante.
" Griffiths, }

An absolutely literal construction of the second proviso of this section would invalidate all mortgages of vessels and chattles, *however old*, although given in good faith and recorded, unless given "for *present considerations*," and would make utterly meaningless the provisions of the four months clause, which protects preferences more than four months old, although given for *antecedent debts* and not " for present considerations."

The proviso then does not mean that no mortgage is valid except such as are referred to in that proviso, but only declares those therein referred to to be valid.

It is worthy of comment that although the bankrupt law of 1867 is so largely copied from the insolvent law of Massachusetts, the sweeping language of the Massachusetts act as to the effect of the assignment has not been adopted in the bankrupt law; and that notwithstanding the proviso in the bankrupt law of 1841 (vide 5 Stat. at Large, p. 442, sec. 2), which *in substance* is the same as the proviso in the act of 1867, the decisions cited from the 2 Story were made.

But as before stated, the case in the 11 Wallace, and the effect of the proviso in the act of 1867 are not material to be discussed here, as the mortgage in question was duly recorded, and it was immaterial whether the deed which was exchanged for the mortgage was ever recorded or not.

It is further respectfully submitted that the decree of the District Court should have upheld not only the mortgage on the building, but also the mortgage on the Atlantic Street property, and the entire decree having been appealed from it, is open to revision as to the latter mortgage, and it is claimed that both mortgages were valid, irrespective of the considerations previously urged, in respect to the mortgage on the building.

The burden of proof upon the assignees seeking to set aside a conveyance as a fraudulent preference is,

1st. To prove that the debtor, at the time, was insolvent, or in contemplation of insolvency.

2d. That the conveyance complained of was made within four months before the time of filing the petition.

3d. That it was made with a view to give a preference.

4th. That the person receiving the conveyance had, at the time, reasonable cause to believe the debtor was then insolvent, and that the conveyance was made in fraud of the provisions of the Act.

I. Was Bacheller insolvent, or in contemplation of insolvency, at the time of either of the transactions sought in this case to be vacated?

There is no evidence in the case to show that he was. He was not examined by the assignees, and his condition at neither of the times in controversy is shown by any evidence in the case.

His condition at these times is not shown by his bankruptcy in October, 1869.

We shall hereafter see, in considering another branch of the case, that when the partnership existing between him and Mr. George F. Breed was dissolved, June 20, 1868, he, Bacheller, received nearly $30,000 as his share of the assets of the partnership, after paying all liabilities, and that he then stated that he was worth $75,000. There is no evidence to show that he lost this, or if he lost it, when the loss occurred.

His schedule in bankruptcy does not set forth his condition, even as late as September, 1869.

He told Mr. Turpin on September 18, 1869, that he had sold his stock in trade to his book-keeper, Patch, for $10,804; and on September 24, 1869, he told Mr. Turpin that he had sold his house for $14,000.

Turpin Depos., Ans. 168, p. 59.

Patch testifies to the same sales.

Patch Depos., Cross-Ans. 7, 8, 9, 10, pp. 1, 3.

Mr. Frazier, one of the assignees, is asked about the correctness of Bacheller's schedule of indebtedness. He says the bills on damaged goring are not valid claims; that the Wooldridge debt is a mistake of Bacheller; that Mr. Wooldridge don't claim anything.

Frazier, Ans. 9, p. 33.

His schedule of debts, not including the debt to Novelli & Co.,

and deducting the claims which Frazier states are not correct, shows an indebtedness of only about $6,564.37.

II. Were the conveyances within four months before the time of filing the petition?

Turpin testifies that on May 6, 1869, Bacheller agreed to make conveyances to him of the store on Exchange Street and Bacheller Street property.

It appears that the conveyances (absolute deeds) were mailed to Turpin, in Lynn, May 17, 1869; that they miscarried in the mail; that they were not received by Turpin until June 26, 1869, and that in the mean time and before June 9, 1869, he received other like conveyances on the same property; that the deeds being alike, he returned one set, viz., two deeds, to Bacheller, and retained two. June 9 was more than four months betore October 22, 1869, the day of the filing of the petition. The agreement was made May 6. One mortgage, viz., that of July 27, which was on the Atlantic Street property, was delivered July 28, 1869, in New York. When in Lynn, July 31, 1869, Mr. Patch, Bacheller's book-keeper, having stated that the deeds needed some alteration, he, Turpin, gave them to Patch, and the same day received the mortgages on the same property, instead of the absolute deeds. He acquired nothing more by the substitution, and his title to the mortgages of July 31, 1869, depends upon his title to the deeds given up, and they were delivered to Turpin certainly before June 9, 1869.

Mr. Turpin testifies that at an interview which he had with Bacheller on May 6, 1869, in Lynn, Bacheller offered to give him some security if he desired it, and proposed to give $8,000 upon his store in Exchange Street, and $2,000 upon the Bacheller Street property. These conveyances were afterwards executed.

Turpin, Ans. 14, pp. 43, 44; Ans. 172, p. 60.
" letter to Bacheller of May 20, 1869, p. 95.

These conveyances were sent by Bacheller to Turpin in an envelope, bearing the Lynn post-mark of May 17, 1869. They miscarried. In the mean time others on the same property were executed and sent to him, and he received them the first week in June, 1869, and

before June 9. The missing deeds came to Turpin's hand June 26, 1869.

Turpin Depos., Ans. 59 to 81, 91, 92, pp. 48 to 52. Cross 93, p. 68.
" letter to Bacheller, June 26, 1869; p. 98.
" " " " 30, " p. 99.
" Depos., Ans. 173, 174, 176, p. 60.
Patch " " 27, p. 25.
" " " 59, p. 30.

Of the four deeds, two were returned to Bacheller in June, 1869, and the other two were given to Patch, July 31, 1869. Turpin was in Lynn on that day and saw both Bacheller and Patch. He told them he was going to have the deeds registered; whereupon Mr. Patch said they would require some alteration. They were absolute deeds, and Patch wanted to have mortgages made instead, and they were made and delivered with mortgage notes on that day, and Turpin left the mortgages so made and the mortgage of July 27, 1869, with Patch to be recorded.

Gave receipts for them, showing they were collateral security, one receipt given July 28, 1869, for the mortgage of July 27, and the others August 11. The mortgages were received as general collateral for Novelli & Co. The letter of July 29, 1869, from Bacheller to Turpin proposes the change from absolute deeds to mortgages.

Exhibits 5, 9, 6, 8,—2 B.F.A.—2 C.F.A., pp. 78, 9 to 12.
Turpin Depos., Ans. 71 to 81 inclu., pp. 50 and 51.
" " " 69, 70, p. 50.
" " " 178, 179, 180, p. 61; Cross-Ans. 93, p. 68.
" " " 186, p. 61.
Patch " Ans. 27, pp. 25 and 26.
" " " 34, p. 26.
" " Cross-Ans. 11, 12 and 13, pp. 28, 29.

The mortgages given July 31, 1869, were on the same property as the deeds given up that day,

Turpin Depos., Ans. 61, 62, 63, p. 49.

The mortgages were recorded Sept. 15 and 17. They had been left with Patch to be recorded. He promised to have them at once recorded, and after the lapse of some time did have them recorded, and left them after record for Turpin at the Tremont House.

Turpin, Ans. 71, 91, 92, pp. 50, 52.

Then, in respect to the mortgages dated July 31, 1869, we say they were substitutions for absolute deeds on the same property, and

going back to these absolute deeds and the date of their delivery, more than four months elapsed before the filing of the petition in bankruptcy, as the first conveyances were mailed May 17, 1869, and they having miscarried, others were received by Turpin before June 9, 1869. The petition in bankruptcy was Oct. 22, 1869.

Turpin Depos., Ans., 68, p. 50.

The note and mortgage of July 27, 1869, were given in New York by Bacheller to Turpin on July 28, 1869, nearly three months before the filing the petition.

Turpin, Ans. 71, p. 50.
" " 76, 78, 79 pp. 51, 79.
Exhibit 4, 7–2 C. F. A., pp. 10, 78, 79, 130, 131, 17 to 21.
Patch, Ans. Cross, 11, 12, 13, pp. 28, 29, 9 to 12, 78, 79.

Turpin did not know how Bacheller came to give that mortgage. It was quite voluntary on his part. Nothing was said about it before it was given, and Turpin had no idea of receiving it before Bacheller presented it. The reason Bacheller stated for giving it was that he was going into the country, and that he wished to show Mr. Turpin and Novelli & Co. that he, Bacheller, was quite willing and able to pay his indebtedness, and that during the time he was away his remittances would not go forward as they had previously done, but that on his return from the country he was going to sell his goods and pay off his indebtedness, which he expected to do, as he then stated, without any encroachment on his real estate, and have $15,000 to $20,000 left.

This statement was made July 28, 1869.

Turpin, Cross, 82-86, inclu., p. 67.
" " 90, p. 111.
" Ans. 82, p. 51.

III. There is no evidence that there was any intent to give a preference.

All the testimony shows that Bacheller's representations were that he was perfectly solvent. He undoubtedly believed himself solvent.

IV. Neither Turpin nor Novelli & Co. had reasonable cause to believe Bacheller was then insolvent, or in contemplation of insolvency.

Mr. Turpin was the general agent of Novelli & Co., representing them in the U. S. His office was in New York. He entered their employment April 2, 1868, and visited Boston every three or four weeks.

Turpin Depos., Ans. 1, 2, p. 42.

The members of the firm were Augustus H. Novelli, of London, Charles H. Bowker and Francis Koenig, of Manchester, all in England, and they have resided at the same place ever since Mr. Turpin entered their employment.

Turpin, Ans. 3, p. 42.
Novelli Depos., Ans. 3.
Bowker " " 1, 2, 3, p. 103.
Koenig " " 1, 2, 3, p. 105.

Mr. Novelli takes no active part in the business, and knows nothing about the details.

Novelli's Depos.

Their business was to take orders from importers buying on their own credit from the manufacturers or merchants the goods ordered, assuming between themselves and the seller or manufacturer the entire responsibility of payment, and charging their customers two and a half per cent. commission for doing the business and interest at the rate of five per cent. per annum. Their business was entirely foreign, embracing the whole United States.

Turpin, Ans. 4, 5, 10, 11, 12, pp. 42, 43.

Mr. Turpin had known Mr. Bacheller ever since April, 1868, and when first acquainted he was a partner with George F. Breed, under the style of J. C. Bacheller & Co., in the same kind of business, namely, shoe-findings, and that firm had done business with Novelli & Co. for a long time. Bacheller's connection with Mr. Breed continued till June 20th, 1868.

Turpin Depos., 6, 7, 8, 9, pp. 42, 43.
Breed Depos., Ans. 1 to 6, p. 72.
Circular of June 20, 1868 (dissolution notice).

Bacheller in his letter to Novelli & Co., of March 24th, 1868, writes that his partnership with Breed will be dissolved July 1st,

1868, and that he intends to continue business, and trusts that their transactions may continue to their mutual satisfaction.

Exhibit 60.

Bacheller writes to Novelli & Co., June 15, 1868, that he trusts to do a large business with them the "coming season."

Exhibit 64, p. 86.

July 21, 1868. Remits balance due from J. C. Bacheller & Co. to Novelli & Co., £4,279 6ds.

Exhibits 69, p. 88.

Bacheller in his letter to Novelli & Co. of July 24, 1868, says he means for the future to concentrate his lasting trade with their house.

Exhibit 71, p. 88.

The transactions of Bacheller with Novelli & Co. were as follows, viz.: He ordered them to send out goods at different times to him. Novelli & Co. charged two and a half per cent. commissions. They paid for the goods, allowing Bacheller the manufacturer's discount, and charging interest at the rate of five per cent. per annum from the date of invoice. They were to receive remittances in sixty days from the date of invoice. The manufacturers knew no one in the transaction except Novelli & Co., and looked solely to them for payment. Novelli & Co. received no other compensation.

Turpin Depos., 10, 11, 12, p. 43.
" " Cross, 28, p. 63.

Mr. Turpin, then, knew Mr. Bacheller as a customer, or patron, upwards of two months before the dissolution.

In July, 1868, Bacheller told Mr. Turpin that he, Bacheller, was worth $75,000 to $80,000.

Turpin Depos., Ans. 14, p. 44.

At the time of dissolution, Bacheller informed Breed that he, Bacheller, was worth over $75,000.

Breed Depos., Ans. 12, p. 73.

In August, 1868, Mr. Breed told Turpin that Bacheller took out of the firm upon the dissolution $30,000 as his portion.

Turpin Dep., Ans. 13, p. 43.
Breed Dep, Ans. 4, 5., p. 72.
" " Cross-Ans., 1 and 2, p. 73.

In August, 1868, Bacheller told Turpin that he, Bacheller, had all the money he required for the business, and would remit promptly.

In October, 1868, he told Turpin he had ample means for his business; that he had $15,000 out on mortgage, in Lynn, that he was going to call in the next month, and put in his busiuess. Also, that he had twenty-six cases of Novelli & Co.'s goods; three of Stansfield, Brown, & Co.; two of Thornton, Homan, & Co., besides some gorings, all in bond, and all paid for, except Novelli & Co.'s

Turpin Depos., Ans. 14, p. 44.

In Bacheller's letter to Turpin, of November 6, 1868, Bacheller says, although he has ready means to send every dollar he owes on the other side, under no circumstances will he remit in large amounts, until he is convinced gold has reached some settled point.

Exhibit 16, p. 79.

Bacheller, in his letter to Novelli & Co., of March 12, 1869, says, Quarter day tightens the money market. Will have to defer remittance till after that point, when he will take immediate steps to reduce their account to £2.000, and will endeavor to keep it at that.

Exhibit 95, p. 91.

March 24, 1869, he showed Turpin a quantity of notes he, Bacheller, said he had received from his customers, and that they amounted from $25,000 to $30,000, and most of them were just maturing.

Turpin Depos., Ans. 14, p. 44.

In Bacheller's letter to Novelli & Co., of April 9, 1869, Bacheller says he has uncollected accounts out of over $40,000. He says, further, that he is not willing to sacrifice the goods at such prices, and shall prefer to wait a better tone of the market, and this will also delay the prompt reduction of his account, that he deemed this just

to them as well as to himself. He further says, that while he is anxious to reduce his account, and will do so as speedily as possible, he does not think they desire him to sacrifice goods to give them very prompt remittances, when a short delay will probably enable him to meet their views without serious damage to himself; that, as he had explained to Mr. Turpin, he would shortly put some $50,000 of real estate upon the market, which, if successful, will give him means for a considerable amount to the credit of their account.

Exhibit 101, p. 91.

In letter of Novelli & Co. to Novelli & Co., N. Y., of April 10, 1869, they enclose invoices to be held as previously noted. Say Bacheller has remitted £977 7s. 8d., leaving an overdue balance of £1,294 6s. 3d., besides interest on statement of December 31, 1868, to say nothing of the amount which had accrued the present year, and they look for the fulfilment of his promises.

Novelli & Co. write to Novelli & Co., N. Y., April 14, 1869, and enclose invoice and bills of lading, to hold, as per previous instructions.

Novelli & Co. write to Novelli & Co., N. Y., April 17, 1869, and speak of not receiving the promised remittance from Bacheller.

In Bacheller's letter to Turpin, of April 23, 1869, Bacheller says he thought, after the conversation with Turpin last week, he understood his position, and as he, Turpin, could see the changes in the money market, it would be suicidal for him, Bacheller, to rush in and buy exchange; that he was not disposed to spoil all prospects for the future by precipitancy now; that he would send exchange along as fast as he could, with due regard to the situation.

Exhibit 37, p. 80.

Novelli & Co., in writing to Novelli & Co., N. Y., April 24, 1869, say Bacheller has again written them, 9th inst., and hand copy to Turpin, and say contents at variance with Bacheller's letter of March 12, as also with Turpin's remarks as to his holding notes of short date of $25,000 to $30,000, many just maturing.

On receipt of the letter they say, "We will thank you to go over to Boston, and especially ascertain the position of his affairs, and the condition of his account with us.

"Should there still be an overdue balance you will please use the following alternatives to induce, request, or insist that he hand over to you, as collateral security, the notes and such other documents of value as you can by any means obtain, to be held by you in safe keeping until such time as he can cover our overdue balance by remittances;" pp. 112, 113.

They say further that there were forty-one cases still to be shipped, amounting in approximate value to £5,000. That a fall in prices having taken place, it becomes an important question whether Bacheller can dispose of the whole of the goods already shipped, together with those still in preparation; that they consider Bacheller's affairs not, in a commercial point of view, satisfactory.

They further add that Bacheller says he has now

	$40,000	to collect,
	50,000	real estate,
and say he has	10,000	stock,
	$100,000.	

That against this their account now culminates to £10,000, and goods to ship now in preparation of £5,000, or $35,000, making $105,000, or $5,000 over and above his supposed capital. This, with his expenses going on, and doubtful trade with small profits, if any, or perhaps loss, is not a comfortable prospect.

The above remarks, please note, are doubtless assumptions; still there remains abundance of facts for your guidance. In any case it is urgently necessary that prompt steps be taken to obtain all the security they possibly can, even to the documents relating to his real property, presuming such to be in existence of the reputed value, as per his letter. They conclude by saying that they have no reason to suppose otherwise than that if Bacheller be the honest man we conceive him to be, he will at once place Turpin in possession of all the collaterals he now possesses; pp. 112, 113.

This letter shows that Bacheller has a surplus of at least $30,000. His property is stated at $100,000. What he owed Novelli & Co., for goods shipped, some of which had not then arrived, and others not taken out of the Custom House, was (£10,000) not exceeding $70,000. In the hundred thousand dollars is not included the goods

in transit or in the Custom House, but the £10,000 includes those. Of course if the whole debt is placed on one side, viz., for goods shipped and to be shipped, viz., £10,000×£5,000, or £15,000, on the other side is to be added to the $100,000, the £5,000 in goods not shipped, or $35,000; making his assets $135,000, to say nothing about the twenty-two cases in the Custom House worth £6,000, against an indebtedness of $105,000. We shall soon see that he transferred, on May 7, 1869, to Turpin, twenty-two cases then in the Custom House, and at that time the debt to Novelli & Co., so far as the goods had been delivered, was only £4,000.

Turpin Depos., Ans. 47 to 52, p. 48.

A correct representation of his affairs at the time this letter was written, is that he appeared and was represented to have $100,000, and then owed Novelli & Co., so far as goods had been delivered, £4,000.

Turpin's letter to Bacheller, of April 26, 1869, urges remittances, and complains that he has not remitted as much as he agreed.

Exhibit 121, p. 94.

Bacheller writes to Novelli & Co., April 27, 1869, complaining of prices, and says he is unwilling to sell at present prices, and prefers rather that they should stop shipments and take the goods lying in bond. He says, by waiting till June, trade will start, and he shall be able to turn himself and pay their demands and interest, without spoiling himself and his trade, as he should do by forcing goods at the then prices. *That he holds himself fully able to pay all his debts.* He also tells them that he has heard that Turpin had said, if he heard of any of Novelli & Co's customers selling goods at less than cost, he gets no more goods.

Exhibit 103, p. 92.

Turpin's letters to Bacheller, of May 1, 1869, complains of small amount of remittances.

Novelli & Co., to Novelli & Co., N. Y., of May 1, 1869, say Bacheller is importing goods through other sources. It is very evident that he has more on his hands than he can conveniently manage. Hence every care and surveillance must be exercised in controlling his account.—p. 112.

May 6, 1869, Mr. Turpin went to Lynn. Saw Bacheller in his store in Lynn. In conversation Turpin told him his competitors said he was selling lastings at a low price. Bacheller said no, that many were underselling him, and showed Turpin his books and Turpin was satisfied with the prices. Mr. Turpin suggested at this interview that, as there was a considerable sum overdue, the goods in bond should be transferred to him, which Bacheller agreed to do, and adding that he could give Turpin some security if he desired it, and proposing $8,000 on the store in Exchange Street, and $2,000 upon the Bacheller Street property. At this same interview it was agreed that all future goods arriving should be transferred to Mr. Turpin at the time of entry, and it was agreed that if Turpin would send him the future invoices and bills of lading, he would attend to the entering at the Custom House, and transfer them to Turpin at the time of entry. He was to have the privilege of selling any of the goods in bond, but the whole proceeds were to be remitted to Novelli & Co., and if he sent Turpin withdrawal notes as occasion required, Turpin was to return them signed. At this interview of May 6, 1869, Bacheller told Turpin that his stock, which had just been taken in Lynn, was worth $20,000, that his house and some property opposite was worth $20,000, that his store and Bacheller Street property was worth $10,000 to $12,000; that altogether he had $50,000 of real estate unincumbered.

Stock in trade $20,000,
Real Estate $50,000,

$70,000.

He also told Mr. Turpin that he had in bond £2,300 worth of goring, £2,000 of which was paid for. This was in addition to $20,000 stock in Lynn. He also told Mr. Turpin at this same interview that he was about building a house upon some land he owned opposite to his own house for his intended son-in-law. He, at this same interview, told Turpin that he owed Archibald Turner £300, Stansfield, Brown & Co. £1,000, and that this with what he owed Novelli & Co., and a few small domestic debts, was all he owed.

Turpin Depos., Ans. 14, 15, pp. 44, 45.
" " " 43 to 46 inclu. pp. 47, 48.
" " " 129 p. 55, Ans. 26, p. 46.
Patch Depos., Ans. 19, 20; p. 24, 25, Ans. 1, 2, p. 23.

We thus have Mr. Bacheller at this time representing to Mr. Turpin that he had stock in store in Lynn $20,000,

Gorings in bond £2,300, $16,100,
Real estate $50,000,

$86,100,

and all that he owed was £300,
1,000,
and Novelli & Co., on goods received 4,000,

£5,300,

which did not exceed $37,100.

Turpin, 47 to 50, p. 48.

This statement showed a surplus of $49,000. (Turpin, afterwards, by letter of May 21, 1869, from Bacheller, was informed that he had paid Stansfield, Brown & Co.)

May 7, 1869, they went to the Custom House in Boston, and 22 cases then in bond were transferred by Bacheller to Turpin, and 7 cases, 370 to 376, were entered and transferred to Turpin at the same time. Case No. 363 formed a part of the 22 cases transferred at that time, it having been entered May 4. June 4, 1869, Bacheller entered cases 377 to 394 inclusive, and transferred them to Turpin at the same time as agreed upon. August 12, 1869, Bacheller entered and transferred at the same time to Turpin, cases No. 395 to 412 inclusive.

September 4, 1869, Bacheller entered and transferred at the same time to Turpin cases No. 413 to 417 inclusive, all the bills of lading having been sent to Bacheller by Turpin a short time before for this purpose.

Turpin Depos., Ans. 14, p. 44.
" " " 19 to 27, pp. 45, 46.

The transfers of May 7, June 4, and Sept. 4, were made by Bacheller, and that of Aug. 12 was made by Kimball, who had a general power of attorney.

Turpin Depos., Ans. 89 p. 52.
Kimball, Cross-Ans. 4 and 5, p. 21.

Of the twenty-two cases in bond on May 7, 1869, and transferred

to Turpin, all were taken out by Bacheller by withdrawal orders signed by Turpin except case No. 363. The bill of lading for this case was posted in New York, May 1, 1869, and, as we have seen, the case was entered May 4, and transferred, May 7, to Turpin.

Turpin Depos., Ans. 16, 17, 18, p. 45.
" " " 42, p. 47.

Turpin, Oct. 14, 1869, withdrew cases 363, 371, 374, 378, 382, 384, 385, 387, 388, 392, 393, and 395 to 417 inclusive, and Mr. Turpin signed withdrawal notes from time to time to Bacheller, for the other cases, upon which Bacheller withdrew them.

Turpin Depos., Ans. 21, p. 45.
See Certificate of Withdrawal.

No change was ever made in the agreement of May 6, 1869. All those goods came from Novelli & Co., none of them from any one else. The bills of lading and invoices for them came to Novelli & Co., N. Y., and Turpin received them there as their agent. Novelli & Co. shipped through George Warren & Co., Liverpool.

Turpin Depos., Ans. 22-25 inclu., p. 45.
" " " 41, p. 47.
" " " 102, p. 53.

Just sufficient time elapsed between sending the bills of lading to Bacheller to enter, and the time of entry to copy the invoices, two or three hours, except in one or two cases where he had them in the evening and the goods were entered the following morning. The goods upon being entered were taken from the ship and put into the U. S. bonded warehouse, at East Boston, where they remained till taken out by Turpin.

Turpin Depos., Ans. 26, p. 46.
" " " 32, p. 46.

May 7, 1869, Mr. Turpin, at Bacheller's request, sent a cable dispatch to Novelli & Co. not to ship any more goods till further advised, as they were not likely to be wanted in the market before July or Aug., and storage or warehousing was cheaper in England than in Boston. That was the reason Bacheller gave. As we shall hereafter see, on June 21, 1869, Bacheller requested Turpin to write Novelli & Co. to ship all the goods in stock from fourteen to

eighteen threads, and on July 6, 1869, he requested Turpin to write them to ship all the goods, and they were all shipped accordingly.

Turpin Depos., Ans. 100, 101, p. 53.

Novelli & Co. to Novelli & Co., N. Y., in the letter of May 8, 1869, say, "Have arranged to stop shipping as advised. Of course we are anxious to know what certainty or even possibility now exists that Bacheller will, or can, utilize and pay for the goods." In the event of Bacheller not being in a position to take the goods in a reasonable time, they ask if it will not be better and safer to dispose of the same to other customers. They think he has been overtrading, and they say they should be placed in the best position of security to shield themselves not only from loss on the open account, but also in the disposal of the goods in bond, and yet to ship.

In Bacheller's letter to Turpin of May 12, 1869, Bacheller says that there was little movement in lastings, and if he could sell any part of the goods at cost or at a little profit, and get paper he could turn to exchange, he would sell, but not otherwise.

Exhibit 38, p. 81.

Novelli & Co., in their letter to Novelli & Co., N. Y., of May 15, 1869, send invoices and bills of lading of nine cases to hold, as usual.

They say we hope no opportunity will be lost to dispose of goods in bond, to suitable and safe parties, if so needed.

In Bacheller's letter to Turpin, of May 21, 1869, Bacheller speaks of engaging $10,000 exchange on a basis of 141¼, and says if Turpin coincides with him, it will be better to move (that is, sell) a part of the goods, which he thinks can be done at 132 to 135 for 14, as some of the importers are stiff at higher rates; that with the high rate of gold he had not been able to remit as he had hoped; but if the present state of things holds on to induce trade, he shall resume. He also tells Turpin that he has paid Stansfield, Brown & Co. Says the deeds were mailed on Tuesday last, and wonders where they are. Says as the bills of lading come, will enter the goods same as the last; that the letter containing the deeds he directed to Turpin, Box 3,535.

Exhibit 42½, p. 82.

Novelli & Co. write to Novelli & Co., N. Y., May 22, 1869, that they trust that they may not only avoid any risk in the future, but also dispose of all the goods without loss. They enclose invoices and bills of lading for three cases.

Novelli & Co. write to Novelli & Co., N. Y., May 29, 1869, and say, referring to Turpin's observations and Bacheller's object in postponing the sale of the goods and soliciting their forbearance, that he may not sacrifice his profits or capital unduly; they wish to impress on Turpin that it is only reasonable they should have some security for the ultimate payment for the goods in full, and especially in the event of any depreciation in prices thereafter, and prior to the whole of the goods being transferred to Bacheller. They then suggest retaining the conveyances until the account and goods now held be placed on a safer basis, and that Bacheller should be urged to be prompt in his remittances on the transfer of goods, and for the present open account.

Mr. Cochrane, a salesman in 1869 for Johnson & Thompson, says that they ceased to sell Bacheller in April, 1869. He is very uncertain about the date, however. Says he sold him some goods and did not deliver them, because some question arose as to his responsibility. Cochrane says he subsequently told Turpin of this. Cochrane admits that Bacheller was then reputed to be worth $75,000 and that Bacheller afterwards told him he was amply responsible.

Cochrane, Ans. 3 to 10, p. 31.
" Cross-Ans. 6, p. 32.
" " 1, 2, 3, 4, pp. 32, 33.
" " 7, 8, p. 32.

Mr. Cochrane is entirely wrong in the details of this transaction. Mr. Harrington, a member of the firm of Johnson & Thompson, and present at the delivery of the goods, testifies to the facts in the case.

He testifies that he had no business with Bacheller, prior to Jan. 7, 1869. That his firm sold Bacheller, on his four months' note, Jan. 7, 1869, $1,622.40; Jan. 11, 1869, $2,906.45; Jan. 14, 1869, $3,301.41; and February 17, 1869, $1,614.92, and all these were paid for.

Harrington, pp. 69 to 72.

That June 5, 1869 (not April), his firm sold Bacheller, terms his four months note, $4,872.91. That he, Harrington, caused the delivery to be stopped, because his partner, Mr. Thompson, told him he heard at the Bank that Bacheller had mortgaged some property to Novelli & Co. That there was no other reason, and that about two or three weeks after that a person to whom he had sold notes of Bacheller came in and said he could place some more of them at one per cent. a month, that being the usual rate. That he afterwards tried to sell Bacheller a part or the whole of the same goods, and Bacheller declined then to buy them. That he himself had charge of the credits. He considered the rate of discount a fair rate, and that Bacheller never afterwards applied to them to purchase. That he had heard nothing against Bacheller's credit when he stopped the goods, and afterwards mentioned to Turpin the chance he had to sell the note if he had received it. Mr. Lawrence was the person who offered to take the note.

Harrington, pp. 69, 72.
" Cross, 3, p. 71.
" " 9, 10, 11, pp. 71, 72.
" Ans. 16 and 17, p. 71.
Lawrence, p. 75, 76.
Turpin, Ans. 130, 131, 132, p. 56.

Mr. Turpin also testifies that Cochrane told him, in July, 1869, that Bacheller was well off, and would pay all he owed, and expressed dissatisfaction that Johnson and Thompson did not deliver the goods, saying it was a great mistake, and Cochrane gave as the only reason why they did not let the goods go, that they had heard he had got security, and that he, Cochrane, did not doubt at all Bacheller's responsibility.

Turpin, Ans. 130, 133, 134, p. 56.
" " 142, 143, p. 57.

This was the only refusal to give credit to Bacheller that Turpin ever heard.

Turpin, Ans. 135, p. 56.

And it is very apparent that the reason given to Turpin why the goods were not delivered, the regret expressed by Harrington and Cochrane both that they did not deliver them, and the representations as to Bacheller's ability, would have no tendency to show Bacheller was insolvent, but the contrary.

Novelli & Co. write to Novelli & Co., N. Y., June 5, 1869, and speaking of Breed wanting a longer credit, they say they must adhere to their usual terms of sixty days' remittance, and that they have only too frequently found that liberty has been taken in making them wait ninety and even one hundred and twenty days. As to Bacheller, they say they are afraid he has not been as ingenuous in his explanations of his affairs to Turpin as he ought to have been, and that his continual dabbling in gold matters renders it a matter of necessity that the greatest circumspection and firmness on Turpin's part must be exercised to pilot their affairs to a safe termination, the sooner the better.

In Bacheller's letter to Turpin, of June 9, 1869, Bacheller says he has made arrangements and shall commence remittances on next Tuesday, and send every mail after, every Tuesday and Friday; that he wished to make the matter of remittances satisfactory.

Exhibit 38, p. 81.

Novelli & Co., in a letter to Novelli & Co., N. Y., of June 10, 1869, say to Turpin, if the houses over which he holds the bills of sale are really mortgaged, they do not see that his documents are of any value whatever, and they think that they should have some tangible security in view of Bacheller's large indebtedness to them, and in the present condition of the lasting trade so far as the goods in bond may be thereafter affected by any fall in prices in England and America.

In letter of June 10, 1869, Bacheller to Turpin, Bacheller says, "I am selling these goods so that I can make a return from them the most of them in thirty days, and before sixty days I feel confident I can pay your whole account."

Exhibit 40, p. 81.

Turpin to Bacheller, in letter of June 12, 1869, says he hopes Bacheller will send a substantial remittance by Tuesday, or can't at present sign any more withdrawal papers. That he has every confidence in his integrity, but that his instructions from his Manchester House are such that they must either have a substantial remittance or more security, or hold the goods until the account is reduced.

Exhibit 130, p. 97.

In letter of June 14, 1869, of Turpin to Bacheller, Turpin returns withdrawal papers, signed in full faith that he, Bacheller, will carry out his promises.

Exhibit 131, p. 97.

In Bacheller's letter to Turpin, of June 17, 1869, Bacheller says that it may be possible that owing to holiday he may be unable to arrange for a remittance the next day, but if so, he will endeavor to double it on Tuesday.

Exhibit 42, p. 82.

In Turpin's letter to Bacheller, of June 21, 1869, Turpin says he will write Novelli & Co. to send out the goods as suggested by Bacheller.

Exhibit 132, p. 98.

In Bacheller's letter to Turpin, of June 22, 1869, Bacheller says he is bound now to close up the whole lasting trade and start again square; that many of the goods are sold for paper, which he shall collect July 1, and swell the remittances, and he trusts in the conclusion of this matter to satisfy them entirely.

Exhibit 44, p. 83.

Bacheller, in his letter to Turpin, of June 19th, 1869, says, "All endeavors are now being used to bring to successful completion the programme proposed to you," and in his letter of June 23, 1869, to Mr. Turpin says, "Matters are moving very satisfactorily, and the programme proposed progresses finely, and it only needs the lapse of a few weeks, say thirty days more, to complete it," etc., etc. "The ball keeps moving." Speaks, in letter of June 19, of making large sales, $10,000, and business good; that he intends remitting by every steamer and increase materially as he advances to the season of the maturity of the sales. Says he thinks it advisable to order out all the goods of certain grades as he can sell them."

Exhibits 43, 45, pp. 82, 83.

Mr. Turpin says the programme mentioned is the substance of the letter to him by Bacheller of June 10th, 1869, to the effect

that he was selling the goods so that he could make a return for the most of them in thirty days, and that before the lapse of sixty days he, Bacheller, felt confident he could pay the whole of the account.

Turpin, Ans. 177, p. 61.
Letter of June 10, 1869. Exhibit 40, p. 81.

In Turpin's letter to Bacheller, of June 25, 1869, Turpin returns withdrawal papers signed, and trusts Bacheller will realize his expectations.

Exhibit 134, p 160.

Novelli & Co. to Novelli & Co., of June 26, 1869, state they have received remittance. They say they can only hope they may get out without loss. Had Bacheller put his shoulder to the wheel earlier, by attending more closely to his legitimate affairs, instead of dabbling in gold, leaving his business in irresponsible hands, and talked less, his matters would have borne a different aspect at the present time. Continue to use every check upon him, and obtain all the security possible.

In Bacheller's letter to Novelli & Co., of June 28, 1869, Bacheller requests a shipment of all the goods, and says, when he orders for next season he will order a certain kind of goods. He further says, "I live in hopes, with a very good prospect of realization, of clearing up my account during the coming month of July."

Exhibit 111, p. 92.

In letter of Bacheller to Turpin, of July 6, 1869, Bacheller says he intended sending £2,000 to-day, but holiday interfered with his arrangements. Everybody away. Sends £410 9*s*. 10*d*. and will perhaps be able to back it up Friday again. Requests Turpin to send word to Novelli & Co., if not already done, to have all the goods come out, that sterling is going off fast and he must put them in the market at once or cancel.

Exhibit 49, p. 84.

Turpin, in his letter of July 7, 1869, to Bacheller, says he had writen to Novelli & Co. to send out all the goods.

Exhibit 138, p. 99.

In letter of Novelli & Co., to Novelli & Co., N. Y., of July 10, 1869, they say we note you have handed over the documents for twenty-three cases to Bacheller, and that twenty-four cases still remain in your (Turpin's) possession. In a letter received this day, Bacheller urges us to ship the balance of his goods immediately, which we have decided to do, transferring the documents to yourself in the usual way.

Novelli & Co., in letter to Novelli & Co., N. Y., of July 17, 1869, say they are disappointed at Bacheller's not remitting more: that they are afraid, from past experience, that he is as fertile in making excuses as he is in promises, and urge constant reminders to facilitate his payments. Will forward eight cases of lastings by next Boston boat, and the balance will follow in due course.

In Bacheller's letter to Turpin, of July 20, 1869, Bacheller says, that only a small portion of his proposals for discount had been done, and encloses a remittance.

Exhibit 52, p. 84.

Novelli & Co. to Novelli & Co., N. Y., July 22, 1869, send bill of lading and invoice for £998 11*s*. 13*d*. to hold as usual.

Novelli & Co. write to Novelli & Co., of N. Y., July 27, 1869, enclosing two bills of lading and invoices of £661 9*s*. 0*d*. and £630 11*s*. 0*d*. to hold as usual; also his account to June 30, showing a balance then of £12,398 8*s*. 9*d*., since reduced to £10,183 8*s*. 3*d*.

In Bacheller's letter to Turpin, of July 29, 1869, Bacheller says one of the documents, that is, conveyances, requires recording in Lynn, and two in Salem, but before that they need changing somewhat.

Exhibit 54, p. 84.

Patch, the book-keeper of Bacheller, early in the summer of 1869, told Lyman B. Frazier, one of the assignees, that Bacheller could pay all his debts and have a surplus.

Patch, Ans. 1, 2., p. 23.
Patch, Cross-Ans. 16 and 17, p. 29.

The statement was made both by Bacheller and Patch, during that summer, to Frazier, who was a director in City Bank, Lynn, that Bacheller could pay all his debts and have $15,000 to $20,000 left. This statement was made to the bank, and Bacheller, through the summer of 1869, had a continuous line of discount at that bank of $30,000. Frazier was urgent for the credit, and continued so, and told the bank he believed the statement to be true.

Frazier, Cross-Ans. 7 to 19 inclu., pp. 34 to 35 inclu.
" " 28 p. 35.
" Ans. 15, p. 35.
" Cross-Ans. 29 and 30, p. 35.
" Ans. 17, p. 36.

Mr. Tapley, the President of the bank, states, that about June, 1869, Mr. Frazier represented to the bank that he had looked over Bacheller's affairs, and either found him worth, or he represented himself to be worth, $30,000, or $40,000. That he found him to be worth, or thought him worth, that sum. Frazier gave the directors this as the result of his own investigations. Bacheller at the time was wanting a large amount of money.

Tapley, Ans. 9 and 10, p. 69, also his entire testimony, pp. 68, 69.

We have seen that the absolute deeds, except the mortgage of July 27, 1869, were mailed in Lynn, May 17, 1869; that they miscarried; that others in their stead were received by Turpin on the same property before June 9, 1869; that on July 28, 1869, Bacheller gave to Turpin, in New York, the mortgage of July 27, 1869; and that on July 31, 1869, the absolute deeds were at Patch's, Bacheller's bookkeeper, suggestion, given up by Turpin, and the mortgages and notes of July 31, 1869, given in their stead.

Turpin usually was in Boston every three or four weeks. It was quite usual to ask questions and make inquiries about his customers. Asked about all his customers. Mr. Breed was one of their customers.

In July, 1869, Mr. Breed told Turpin that he thought Bacheller could pay all his debts and have $15,000 to $20,000 surplus.

Turpin Depos, Ans. 123, p. 55.
" " " 119, 120, 121, p. 55.
" " " 127, 128, p. 55.

Mr. Breed says he told Turpin, a short time before the failure,

that he, Breed, had been informed that Frazier had investigated Bacheller's affairs, and reported that he could pay his debts and have $15,000 left, and that Frazier's reputation was such, that if he investigated and made that statement, it must be correct. This was so short before Bacheller's failure, that the failure very much surprised Mr. Breed.

Breed, Ans. 14 and 15, p. 73.
" Cross, 3 to 14, pp. 73, 74.

On July 28, 1869, when Bacheller gave the mortgage to Turpin of July 27, 1869, he told him he was going into the country for a month to recruit his health, and on his return he was going to sell his goods and pay off his indebtedness, and that he expected to do this without any encroachment upon his real estate, and have $15,000 to $20,000 left.

Turpin, Cross, 82 to 86, inclu., p. 67.
" " 90, p. 67.
" Ans. 82, p. 51.

This brings us to the point of time when the mortgage of July 27 was given, and it is confidently submitted that there is nothing in the facts or correspondence to show that either Turpin or Novelli & Co. had then any reasonable cause to believe Bacheller insolvent, or in contemplation of insolvency.

Bacheller represented to Turpin that he had a clear title to the Bacheller Street property, and Turpin did not find to the contrary until after Bacheller went into bankruptcy.

Turpin, Ans. 90, p. 52.

In August, 1869, John B. Alley told Turpin that Bacheller was a strictly honest, honorable man, and would fulfil all his engagements; that he didn't know what he was worth, but thought he must be pretty well off.

Turpin, Ans. 125, 126, 127, p. 55.

Novelli & Co., in letter to Novelli & Co., N. Y., of August 3, 1869, enclose a further invoice and bills of lading of five cases, amounting to £677 13*s*. 0*d*. to hold as before.

In Novelli & Co's letter to Novelli & Co., N. Y., of August 14,

1869, they say they have received recently only two small remittances, £409 1*s*. 10*d*., and that his promise of June 28, to settle up in July, is not fulfilled, nor nearly so.

Turpin, in letter to Bacheller of Aug. 16, 1869, says he is greatly disappointed that Patch did not keep his appointment on Saturday last, as from what Bacheller said in N. Y., he, Turpin, had written Novelli, that he would give them, per this mail, some positive information as to how his affairs stood, and came to Boston, in a great measure, on that account, and now, having put it off ten days or two weeks, they will certainly think they are trifled with; and that he, Bacheller, does not realize the importance of the amount involved; should not be surprised to receive some unpleasant instructions, &c.

Exhibit 143, p. 100.

Novelli & Co., in letter to Novelli & Co., N. Y., Aug. 21, 1869, say that they are afraid Bacheller's affairs are in a very bad way, and they request Turpin to obtain and retain all the security he can; that the fact of his property being already mortgaged to other holders renders the security in Turpin's possession of very doubtful value. In addition, his promises have been so specious and unreliable, and knowing his gold-dealing propensity, they fear he may not be sufficiently sensitive of his position, nor of their requirements, and they await anxiously the result of his investigations when in Boston and Lynn.—p. 108.

Novelli & Co., in letter to Novelli & Co., N. Y., of Sept. 2, 1869, say, having gone to Boston and Lynn for the special purpose of investigating Bacheller's affairs, as shown by his books, we think it is a pity you did not satisfy yourself, before returning, what his present ability to pay may be, and then to state what the prospects are for an early settlement, or for a settlement at all, &c., &c. Bacheller must have lost more money than he is willing to admit, or he never had the capital he was reported to have had. We await more precise intelligence.—p. 106.

Novelli & Co. to Novelli & Co., N. Y., in letter of Sept. 11, 1869, say, "We have not received any remittance from Bacheller since ours of 14th ult. We understood the goods delivered were all sold.

If so, where are the proceeds? We should suppose a man whose affairs are in such an uncertain, if not critical state, should not be soldiering, or even absent from his business a moment."

Turpin, in his letter to Bacheller, of Sept. 15, 1869, says Novelli & Co. say they are very much disappointed at not receiving the promised statement of his stock-taking, &c., and think he is treating them very roughly, after the kindness they have shown him, which he, Turpin, indorses, as it does not cost anything except a little labor, and shows, he thinks, a great indifference as to Novelli & Co's interest or feelings. Trust you will meet us on Friday, with full statement as to your accounts, &c.

Exhibit 144, p. 100.

Novelli & Co., to Novelli & Co., N. Y., Sept. 18, 1869, say J. C. Bacheller's account we must have reduced, and that soon.

Patch writes to Turpin, Sept. 20, 1869, that he owes him an apology for the delay in recording the conveyances, but that the delay causes no detriment to Novelli & Co.

Exhibit 56, p. 85.

Novelli & Co., to Novelli & Co., N, Y., Sept. 25, 1869, say, "As to J. C. Bacheller, we can only repeat our suggestions for the employment of the utmost vigilence in the oversight of this account. Soon after Mr. Skelhorn's arrival, we look for your combined opinion in this matter.

Neither on or before Sept. 4, 1869, had Turpin heard any rumor against Bacheller's credit except the non-delivery by Johnson & Thompson, and the reference mentioned as to Bacheller's speculating in gold, and had no reason to doubt the correctness of Bacheller's representation as to his ability and property and what he owed. He placed confidence and reliance in his statements, and had no reason to doubt their accuracy or truth, and did not have any reason to suppose or believe that Bacheller was insolvent or in contemplation of insolvency, or had not property sufficient to meet all his engagements and liabilities as they matured. Turpin was fully impressed that he only waited till gold or exchange became more favorable, and this he frequently told Turpin was his only cause for delay in remitting. Bacheller gave, as the general reason why he

did not remit, that he was sure gold and exchange would soon be lower, and that was what he was waiting for, and he always denied that he speculated in gold or bought more than he needed for his business.

Turpin Depos., Ans. 146 to 153, inclu., pp. 57, 58.
" " " 144, p. 57.
" " " 104, p. 53.

Turpin first had reason to believe Bacheller was insolvent after the middle of Sept., 1869, 16th or 17th.

Turpin, Ans. 184, p. 61.
" Cross-Ans. 23, 24, 25, p. 63.

Bacheller had not failed when he made the last entry and transfer of goods, Sept. 4, 1869.

Turpin, Ans. 165, p. 59.

Mr. Novelli's deposition was taken. He resides in London, takes no active part in the business, and knows nothing about the matters in question.

Novelli's Deposition.

Mr. Bowker and Mr. Koenig's depositions were taken, and they testify that Oct. 4, 1869, was the first time they had any cause to believe, or did believe, that Bacheller was insolvent, or in contemplation of insolvency. They had heard, prior to that, that he was speculating in gold, but it gave them no uneasiness, and we have seen that he, Bacheller, assured Turpin that he was not speculating in gold.

Bowker & Koenig's Dep., pp. 101 to 107.

Mr. Patch, the book-keeper, did not know of any indebtedness of Bacheller outside of his regular business till some time in Aug., 1869.

Patch, Ans. 52 to 54 inclu., pp. 29, 30.

There was nothing in Bacheller's not remitting, which excited any suspicion or distrust in Mr. Turpin's mind. He had been behindhand from the time he had commenced business. He was always in the habit of delaying payments, waiting for a decline in gold. Mr. Breed, in July, 1868, told Turpin that Bacheller, when

with him, always wanted to delay until gold or exchange was at more favorable rates, and that this was the cause of the disagreement between Breed & Bacheller, which led to a dissolution of their firm.

Turpin Depos., Ans., 106, 107, 108, pp. 53, 54,
" " Cross-Ans. 53, 54–57, p. 65.
Breed " Ans. 1 to 6, 9, 10, 11, pp. 72, 73.

In the letter of April 23, 1869, of Bacheller to Turpin, Bacheller says, "I thought, after the conversation with you last week, you understood my position." Mr. Turpin says, this conversation was that Bacheller had funds on hand, but gold was so high he did not want to remit until a decline.

Turpin Depos., Ans. 175, p. 60.

Turpin gave, from time to time, withdrawal notes to Bacheller, to withdraw some of the goods previously transferred to Turpin, and had no security whatever that Bacheller would remit the proceeds. He only had Bacheller's promise; Bacheller did not remit the identical proceeds, but from time to time out of his general funds.

Turpin Depos.
" " Ans. 56, 57, p. 48.
Kimball " " 16, 17, 19, pp. 19, 20.
Patch " " 22–25, p. 25.

Turpin never refused to sign and return withdrawal orders whenever requested by Bacheller.

Patch Depos., Ans. 43, p. 27.
" " " 58, p. 30.
Turpin " " 87, p. 52.

Turpin sent Bacheller withdrawal orders for thirty-nine cases.

May 26,	1869,	3
June 10,	"	7
" 12,	"	4
" 14,	"	5
" 21,	"	4
" 23,	"	3
" 25,	"	3
" 26,	"	4
" 30,	"	4
July 7,	"	2
		39 cases.

They were worth about $4,000 without the duties, and some (five cases) of these goods were taken out by Bacheller as late as Sept. 20, 1869.

Turpin Depos., Ans. 85, 86, 87, pp. 51, 52.
" " " 95, p. 53.

The value of the goods withdrawn by Bacheller on these withdrawal orders exceeded the amount remitted between $400 and $500.

Turpin Depos., Ans. 37, p. 47.

The fact of giving these withdrawal orders shows that Turpin had entire confidence in Bacheller's solvency.

Bacheller, in Sept. 1869, returned to Turpin three of the withdrawal orders. They are in duplicate.

Turpin, Ans. 36-40, p. 47.

Exhibit 10 shows that after January 1, 1869, Novelli & Co. delivered Bacheller £9,579 5*s*. 10*d*., in goods.

Mr. Patch says that he wrote once, if not more than that to Turpin to come to Lynn. He says he so wrote at Bacheller's direction, that the interviews might be more private than in Boston. That this was not in the letter, but only what Bacheller told him.

Patch, Ans., 36, 37, p. 27.
" " 40, p. 27.

Mr. Turpin swears he never heard anything of the kind.

Turpin, Ans. 115, p. 54.

The fact is, that Bacheller kept a small office in Boston till April 10, 1869. His principal place and store was at Lynn. His customers were there. He told Turpin that it was more convenient to have his place of business in Lynn, and gave him this as a reason for discontinuing his office in Boston. After he ceased to have his office here, there was no special place here where Turpin could see him. There never was any particular place of meeting, or any secrecy about the meetings, or any suggestions of the kind to Turpin.

Turpin, Ans. 110-114 inclu., p. 54.
" " 116, p. 54.
" " 145, p. 57.
Patch, Ans. 40, p. 27.
41, p. 27.

But it will be said that there was some conversation May 6, 1869, about not recording the deeds.

Mr. Turpin says that Mr. Bacheller said he had rather they would not be recorded, unless Mr. Turpin particularly desired it, giving as a reason that there were rumors on the street, circulated by his enemies, that he was speculating in the gold room, and if recorded, it might increase those rumors; that they were circulated by his competitors who wanted to injure him in his business; *that he did not speculate in gold, but bought what he required for his business purposes—for duties and remittances.* It was agreed that they might be recorded at any time Turpin wished. Mr. Patch, of May 6, added, that if he, Turpin, wanted them recorded at any time, he would have it done upon sending them to him, and that it did not make any difference; that they were equally valid, and could be recorded at any time without any detriment to Novelli & Co. There was no further conversation. Mr. Turpin first heard of the necessity of recording in a casual conversation afterwards with a Notary in New York.

Turpin, Depos., 136, p. 56.
" " 144, 148, pp. 57, 58.
" " 137 to 141 inclu., pp. 56, 57.

Mr. Patch testifies that they were to be recorded at Mr. Turpin's pleasure.

Patch, Ans. 59, p. 30.

It will also be argued that Turpin had been asked whether Bacheller was dealing in gold, and had heard some rumor on that subject. It is true that George F. Breed told him it was so said, and at the same time told him Bacheller said he was not. Boyce, a rival of Bacheller's in business, asked Turpin if Bacheller was dealing in gold. Turpin also swears that Bacheller assured him that it was not so; that the rumor was circulated by his enemies, and competitors in business, and that he only bought what he needed for duties and remittances.

Turpin, Dep., Ans. Cross, 58, 59–63, pp. 65, 66.
" " " 144, 148, pp. 57, 58.

It will also be said that Mr. Greey had a conversation with Turpin. This conversation was about September 10, 1869. Greey saw Turpin, asked him what he knew about Bacheller. Turpin replied that he always considered him perfectly sound, and would have

trusted him to any extent. Turpin at this time had heard that Greey's firm, Archibald, Turner, & Co., were the only other creditors, and came to ask Greey what he intended doing; that, subsequently Turpin told him that he had had a great deal of trouble with Bacheller about payments, and he was afraid he should get into trouble with his house in consequence; that Bacheller had been much behindhand in remittances; and that he had not received any money from him for some time.

Greey, Ans. 3 to 6 inclu., p. 36.
" " 10, p. 38.

Greey says that, after the bankruptcy, Turpin told him that he had for some time been very much afraid of Bacheller's ability to pay.

Greey, Ans. 9, p. 38.

Turpin says he told Greey that he was surprised at Bacheller's offering to give a statement, if that meant that he couldn't pay his debts, and that he, Turpin, always thought he could do so, and have a surplus. This conversation was September 24, 1869, after all the goods had been transferred.

Turpin, Ans. 161, 162, p. 59.

Never told Greey, before Bacheller's failure, had been afraid of his ability to pay, or had any doubts on that subject.

Turpin, Ans. 164, p. 59.

Turpin says that he told Greey that, eventually, Bacheller might lose all his money, or a great portion of it; but that he, Turpin, thought he would pay everbody, and, at that time, was quite able to do so. He thinks this was in August, 1869.

Turpin, Ans. 166, 167, p. 59.

Turpin's conduct was most open with Greey. He, September 24, 1869, went to his, Greey's counsel, showed him his mortgages, and told him of the goods in bond.

Turpin, Ans. 155, 156, p. 59.

Frazier says there was a great deal of talk through April, 1869, about Bacheller, and a report of his failure; then it died away, and he seemed to go along easy in the summer. That there were a great many rumors in April and May, 1869, but Bacheller's particular

friends believed in him. The rumors were that he was losing money at the gold board,—rumors against his credit.

Frazier, Ans. 10, 12, 13, p. 33.

We have seen that Mr. Frazier himself was urgent, through the summer of 1869, for the $30,000 line of discount at the City Bank, Lynn; that he was a director; that he reported he had examined into Bacheller's affairs, and that he was worth a large surplus over his debts, and that the bank gave him that line of discount, and that Frazier believed he had a large surplus.

Frazier, Cross-Ans. 7 to 19. pp. 34, 35.
" " " 28, p. 35.
" 15 Ans., and 29 and 30 Cross-Ans., p. 35, and Ans. 17, p. 36.
Tapley, Ans. 9 and 10, p. 69.
" whole deposition, pp. 68, 69.

Nathan Nichols and his partner, Isaac B. Boyce, are also called to Bacheller's credit. They were both rivals and competitors in trade. They say his credit among those engaged in the importation and sale of shoe manufacturer's goods (that is, among his rivals and competitors) was not good. Mr. Nichols says this condition of his credit began as early as December, 1868, and continued to the time of his failure. Mr. Boyce says his credit was doubted by some nearly a year before his failure.

Nichols Depos., 39, etc.
Boyce " 40, etc.

Neither of these two persons had any dealings with Bacheller; he never applied to either of them for credit. All Mr. Nichols knows is that he heard that Johnson and Thompson refused in the instance named, and all that Boyce ever heard was of that transaction, and Stansfield, Brown & Co. had refused to give him credit. When, it don't appear.

Nichols, Cross-Ans. 2, 3, 4, pp. 39, 40.
Boyce " " 1 to 14, pp. 40, 41.

Bacheller had no trade with importers of shoe-findings here. He was their competitor. Boyce never heard of his buying any goods of them, or applying to any of them for credit.

Boyce, Cross-Ans., 8 to 13, inclu., p. 41.

When asked what affected his credit, he, Boyce, says selling his merchandise at what he believed losing rates, rumors regarding his speculations in gold, and sale of his notes at high rates, ten per

cent. he says, and fixes the time in November, 1868, and bought some himself, namely, $7,000, with Bacheller's endorsement at that rate at that time. Had no personal knowledge of Bacheller's selling goods low only as he came in competition with him.

Boyce, Ans. 9, 10, p. 41.
" Cross-Ans. 15 to 18, pp. 41, 42.

The difficulty in giving any force to the testimony of these two witnesses when speaking against Bacheller's credit is, that they go back too far,— one almost back to the time when he dissolved with Breed, and the other to December, 1869. The orders for many of the goods here were given in January, 1869.

Patch, Ans. 55, p. 30.

But Turpin never heard any of these rumors, except that about his dealing in gold, and he assured Turpin that he dealt only to the extent of the wants of his business.

Besides, we have seen the testimony of Mr. Tapley, the President of the City Bank of Lynn. They never refused to discount for Bacheller. Discounted whatever he offered, even including the weak paper. Relied on his responsibility, and believed he had a large surplus, and gave him a continuous line of $30,000 discount.

Tapley, Depo., pp. 68, 69.

Mr. Wm. F. Lawrence, banker and broker, who sold very largely paper of those engaged in shoe-findings, boot and shoe and leather trade, and who knew Bacheller well, and had sold his paper, was absent in Europe, from Aug. 23, 1869, to March 14, 1870, and never heard, up to the time he left Boston, Aug. 23, 1869, anything against Bacheller's credit. He then stood as well as he ever did, so far as he, Lawrence, knew. Was reputed to be worth $75,000. Lent him money, $3,000 to $5,000 at a time without security. Discounted notes, bearing his endorsement. His transactions with Lawrence for two years, prior to his, Lawrence, leaving for Europe, were $100,000. Bacheller was in his office, once a week, on an average. Lawrence was constantly in contact with Lynn people — selling in 1869, about $4,500,000 of paper, 75 per cent. of it containing the names of parties in shoe or leather, or shoe-findings trade in Boston or Lynn, and 98 or 99 per cent. of it paper, arising in that or the leather trade. Always could sell Bacheller's paper at fair rates.

Lawrence, Depos., pp. 75, 78.

We have, in the testimony of Mr. Tapley and Mr. Lawrence, and even of Mr. Frazier, the testimony of those who dealt with Bacheller, and who acted upon his credit. Their *conduct* shows his credit was good.

That the conveyances of July 31, 1869, being substitutions of mortgages for absolute deeds received before June 9, 1869, the validity of the former depends upon the validity of the absolute deeds; and more than four months elapsed after the delivery of these absolute deeds before the filing of the petition.

That on July 28, 1869, when the mortgage of July 27 was delivered to Turpin, neither he nor Novelli & Co. had any cause or reason to believe that Bacheller was insolvent, or in contemplation of insolvency; that, at that very time, Bacheller told Turpin he could pay all his debts, without encroachment on his real estate, and have $15,000 to $20,000 surplus. That Turpin had no cause or reason to believe that Bacheller was insolvent, or in contemplation of insolvency, until the middle of Sept. 1869, and that Novelli & Co. had no such cause or reason to believe until early in Oct. 1869. That Turpin, in July, 1868, was informed that Bacheller was worth $75.000; that he had received, as his part of the assets of J. C. Bacheller & Co. $30,000 after the payment of all the debts. That April 9, 1869, Bacheller represented that he had uncollected accounts of over $40,000 or $50,000 in real estate; on April 27, 1869, that he was fully able to pay all his debts, but would not sacrifice his trade and means, by forcing goods when trade would start again in June; on May 6, 1869, that he had $20,000 in stock in Lynn, and $50,000 real estate unincumbered, to say nothing about the goods of Novelli & Co., in bond.

That he had in bond, besides Novelli & Co's. goods, £2,300 in goring, £2,000 of which was paid for; that all he owed besides Novelli & Co., was £1,300 and a few domestic bills. He then owed Novelli & Co., so far as goods had been delivered, making £4,000, his debts £5,300, and his assets,—

Stock in Lynn	$20,000
Real Estate	50,000
Goring in bond, paid for £2,000 . .	16,000
	$86,000

That on June 10, 1869, Bacheller wrote to Turpin that in sixty days he felt confident he could pay the whole account; and in letter of June 19 he referred to the same thing and spoke very encouragingly of trade and prices. On July 6, 1869, he requested Turpin to have all the goods shipped, and they were all shipped. That a short time before the failure Mr. Breed had informed Turpin that Mr. Frazier had investigated Bacheller's affairs, and he could pay all his debts, and have $15,000 left. That on July 28, 1869, Bacheller made the same statement to Turpin, and added, without any encroachment on his real estate. That in August, 1869, Mr. John B. Alley told Turpin that Bacheller would fulfill all his engagements, and must be pretty well off. We have also seen that Turpin returned delivery orders signed, whenever requested—that he sent delivery orders exceeding by £400 or £500, the remittances during the same period—that Turpin never heard of any refusal to give Bacheller credit except in the single instance, in the case of Johnson & Thompson, and the only reason given for that could excite no doubt or suspicion in Turpin's mind as to Bacheller's condition—that his not remitting was no cause of suspicion or doubt as it had been his habit even when with Breed, and caused the dissolution of their partnership, and Bacheller assured Turpin of his ability to pay, and always gave as a reason for not remitting (and his letters show it), that he was waiting for a decline in gold. He also again and again assured Turpin that he was not speculating in gold. His credit was good among his neighbors, and among those who dealt with him. No note of his ever went to protest. A mere neglect to remit for an open account when payable, would be no ground of proceeding against him even in bankruptcy—and it is a matter of familiar knowledge that men do not attach the same necessity to the payment of open accounts when due, which they attach to negotiable paper. Novelli & Co. deliver Bacheller, after January 1, 1869, £9,579 5*s*. 10*d*. in goods, and he continues remittances to August 4, 1869. In July he remitted £2,416.

That Turpin relied upon and confided in the statements made by Bacheller and had no reason to doubt their accuracy.

JOSHUA D. BALL,

For Appellees.

Supreme Court of the United States.

No. 41.

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JABEZ A. SAWYER ET AL.,

COMPLAINANTS AND APPELLANTS,

VS.

EDWARD TURPIN ET ALS.,

RESPONDENTS AND APPELLEES.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEES.

JOSHUA D. BALL, *for Appellees.*

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There is no foundation for the allegation that there was any agreement that the deeds should not be recorded. There was an allusion made by Bacheller to the subject in a conversation, May 6, 1869, Bacheller saying he had rather they would not be recorded, unless Mr. Turpin particularly desired it. But it was distinctly agreed that they should be recorded at any time when Turpin desired it. Turpin was told it made no difference to him whether recorded or not, that they were equally valid. He, Turpin, first heard of necessity of recording in a casual conversation with a Notary in New York. He (Turpin), July 31, 1869, told Bacheller and his clerk, Patch, that he was going to have the deeds registered, and thereupon Patch, the clerk, said they required some alteration. They were absolute deeds, and Patch wanted to have mortgages made instead, and the mortgages were made and delivered on that day, and Turpin, after they were so delivered, left them with Patch to be recorded, and he promised to record them at once, but neglected it until Sept. 17, 1869. The letter of May 26 (Exhibit 127, Record p. 96) authorizes no such construction or inference as that claimed by appellants. See original brief, pp. 35, 10.

The Revised Statutes of Massachusetts (Anno 1836) provided that "No mortgage of personal property hereafter made, shall be valid against any other person than the parties thereto, unless possession of the mortgaged property be delivered to and retained by the mortgagee, or unless the mortgage be recorded by the clerk of the town where the mortgagor resides."

Revised Statutes of Mass., ch. 74, sec. 5, p. 473.

The provision of the General Statutes of Massachusetts, (Anno 1860) so far as material in this case, is substantially the same. It is in these words:

"Mortgages of personal property shall be recorded on the records of the city or town where the mortgagor resides when the mortgage is made, and on the records of the city or town in which he then principally transacts his business or follows his trade or calling. If the mortgagor resides without the State, his mortgage of personal property within the State, when the mortgage is made, shall be recorded on the records of the city or town where the property then is. Unless a mortgage is so recorded, or the property mortgaged is delivered to and retained by the mortgagee, it shall not be valid against any person other than the parties thereto, except as provided in the following section."

General Statutes of Mass., ch. 151, sec. 1, p. 766.

The exception embraces only a mortgage contract of bottomry, or respondentia, or any transfer, assignment or hypothecation of a ship or vessel, or any transfer in mortgage of goods, at sea or abroad, if the mortgagee takes possession of such goods as soon as may be after their arrival in the State.

Ibid, ch. 151, sec. 2, p. 767.

The Supreme Judicial Court of Massachusetts, the highest Court of record in that State, in one of their leading decisions made in the year 1856, say: "*The time when the record shall be made is not specially prescribed, though it must undoubtedly precede the possession by others subsequently acquiring an interest in the mortgaged property. Revised Stat., ch. 74, sec. 5. To prevent it passing to them it will be sufficient that the record is made at any time before such possession is taken, though it be long after the execution of the mortgage.*"

Mitchell et al *vs.* Black et al, 6 Gray, p 106.
Vide also, Briggs *vs.* Parkman, 2 Metc., 258.
Adams *vs.* Wheeler, 10 Pick, 199.
Seaver *vs.* Spink, 8 Nat. Bank Reg., 218.
Cragin *vs.* Carmichael, 11 Nat. Bank Reg., 511.
In re Wynne, 4 Nat. Bank Reg., 23.
Gibson *vs.* Warden, 14 Wallace, 244.

A mortgage of personal property recorded takes effect from *the time of its execution*, and not from the *time of its record*, unless in the